

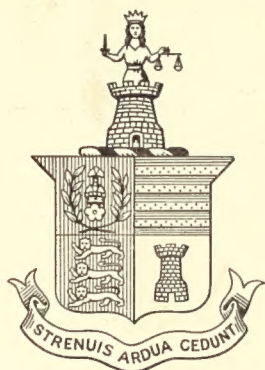
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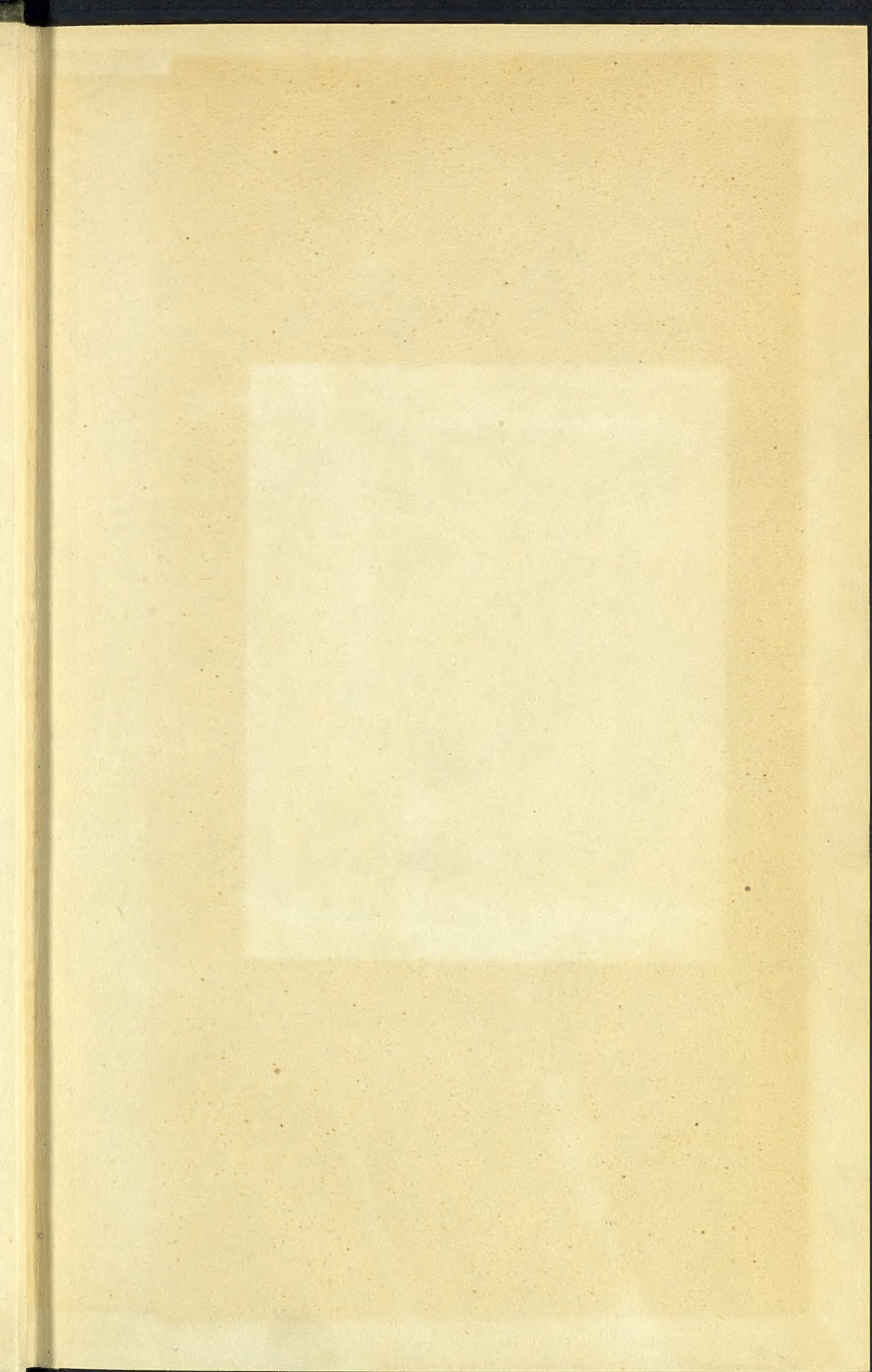
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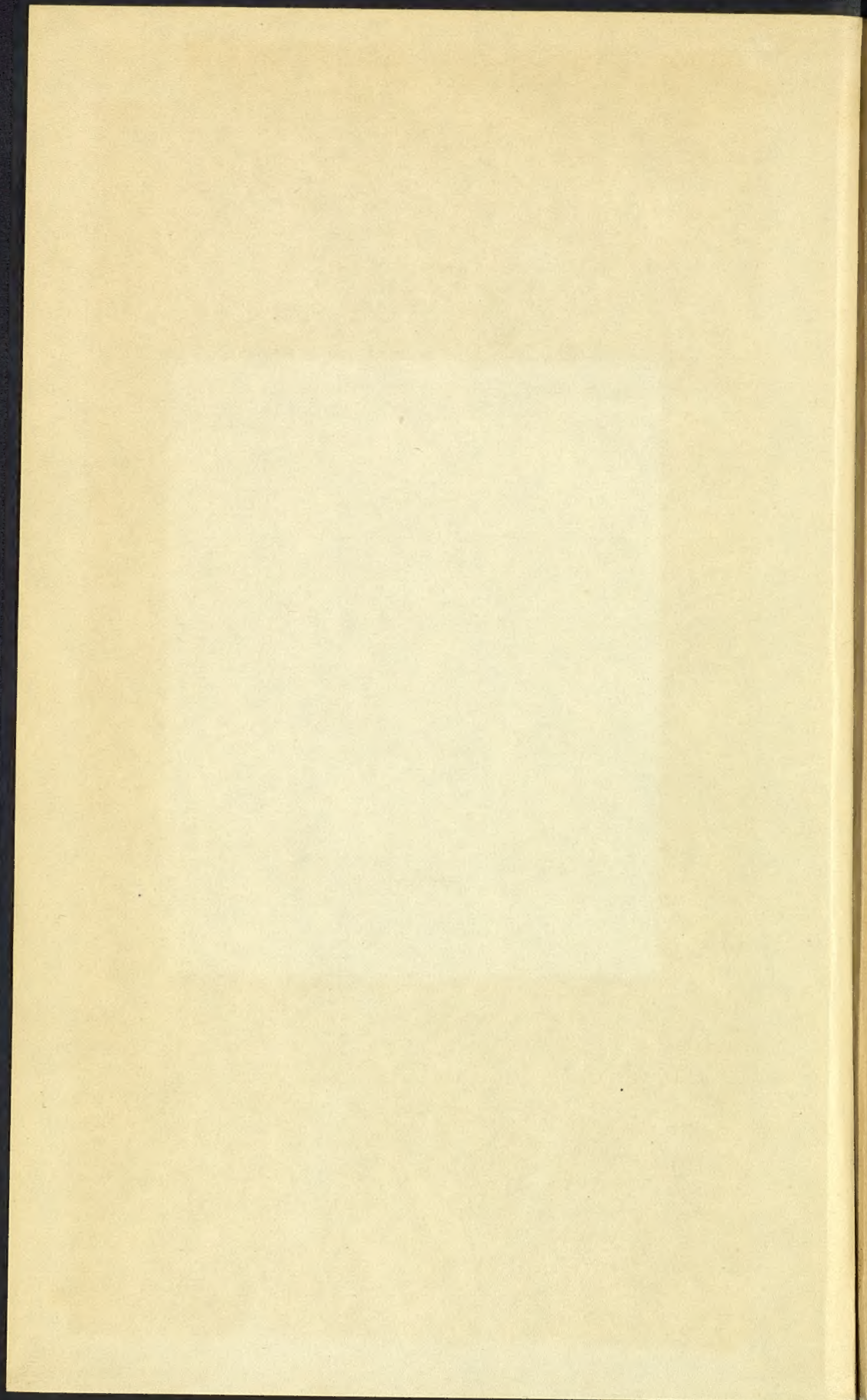
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HISTORICAL MANUSCRIPTS COMMISSION.

TWELFTH REPORT, APPENDIX, PART VI.

THE
MANUSCRIPTS
OF THE
HOUSE OF LORDS,
1689—1690.

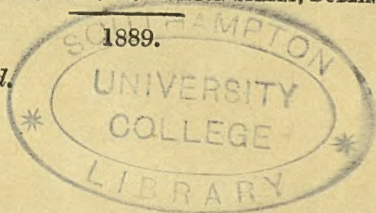
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INTRODUCTION.

THE present calendar begins with the first meeting of the Convention on 22nd January 1688-9. The Lords, as is known, had met in their own House, during the Interregnum, on December 22, 24 and 25, when they voted Addresses to the Prince of Orange, which were adopted by the Commons on the 27th, requesting him to undertake the administration of public affairs after James' flight, and to summon a Convention. The proceedings of this informal meeting, however, are not here recorded, beyond incidental references to an Order prompted, probably, by the recollection of the "Irish Night," for the removal of Papists, except householders, from London (No. 6), and a warrant, signed by Francis Gwyn, their Lordships' temporary clerk, for the committal to the Tower of the Earls of Salisbury and Peterborough, the latter of whom afterwards petitions the House for his release (No. 8). On 22 January, when both Houses assembled, the Lords, after reading a letter from the Prince, drew up an Address of thanks, which was agreed to by the Commons and presented to him at the Cockpit at Whitehall by the Dukes of Norfolk and Ormond (No. 5). On the 29th began the memorable debate on the Commons' resolution of the previous day, declaring the abdication of James and the vacancy of the Throne. The originals exist of two letters, which were read during these proceedings. One of these is the Prince's message to James, of Dec. 17, advising him to remove to Ham (No. 10b); the other is James' letter to the Lords, which was delivered on Feb. 2 by Lord Preston, but which the House refused to read. The text of the latter shows how garbled is the version given in James' Life (No. 11). The MS. Minutes record the opinions of the Judges on the questions propounded to them during the debate, as well as the tellers and results of the various divisions. A motion made during these proceedings "that when the House " is to be told, the Lords shall go on each side of the House to " be exactly counted, and not go below the Bar," seems to point to some confusion. At any rate, the numbers have been differently stated by different writers, and those given by Clarendon,

who himself acted as a teller, vary more than once from those taken down by the clerk. Nottingham's plan of a Regency, which the House refused to soften down by an amendment, giving the Regent only administrative power, was rejected by 51 to 48. On 4 February, the Lords, who had substituted the word "deserted" for "abdicated" and struck out the clause declaring the throne to be vacant, insisted on their first amendment by 55 to 51 and on their second one by a majority of only one (54 to 53), Nottingham being the teller, in this case, for the majority. With regard to both of these amendments the Lords ultimately gave way, but after doing so, they affirmed what they had previously negatived, when proposed as a compromise with respect to the vacancy of the Throne, by carrying by 65 to 45 a separate resolution, declaring the Prince and Princess to be King and Queen (No. 10). To this resolution the Commons added, as a preamble, the famous Declaration of Rights, in regard to which the Lords waived the amendments made after consulting their assistants, and which was read to the Prince and Princess on the 13th of February by the deputy clerk of the Parliaments, before Lord Halifax formally tendered them the Crown (No. 14). The Proclamation, prepared by the Lords, and agreed to by the Commons, was published the same day at Charing Cross (No. 15).

All questions as to a general election were set at rest by the King's going in state to the House of Lords (18 Feb.) and addressing both Houses from the Throne (No. 16), and by the introduction of a Bill the same day, consisting originally of a single clause, declaring both Houses sitting since the 13th a Parliament, notwithstanding any want of writs of summons (No. 17). To this Bill the Royal Assent was given on the 23rd; the Coronation did not follow till 11 April. The new Oaths for members, embodied first in the Declaration of Rights and added by the Lords to this Act in Committee, had been prepared in the first instance by a Sub-Committee, consisting of Nottingham, Delamere, Wharton, Rochester, and the Bishop of Peterborough; the last named himself a non-juror. They were administered for the first time on 2 March, when three Bishops and 73 temporal peers, beginning with Danby, as Lord President, signed the new Roll (No. 4), as well as the Roll containing the Declaration in the Test Act of 1678. (No. 3.) The summons sent by Halifax, as Lord Speaker, requiring the Lords then absent to attend on the 18th, elicited a letter of excuse from Archbishop

Sancroft at Lambeth, which he was ordered to be informed was "not satisfactory." The Bishop of St. David's pleaded ineffectually, as a reason for his absence, some "extraordinary business" caused by "the rabble" having seized his goods (No. 21). On the 9th there is a letter from the Bishop of Winchester, in reference to a complaint made in the House, that some ministers in his diocese had neglected to pray for William and Mary, as directed by the Order in Council. Leave was given to the Marquess of Winchester to bring in a Bill on the subject, but there the matter appears to have dropped (No. 29). The Act which settled the new Oaths for office-holders—a question complicated by the provisions of six different Statutes—originated also with the Lords, who, after partially considering a Commons' Bill for the same purpose (No. 38), resolved by 38 to 27 to proceed with their own. The history of this Act can be traced through all its stages, from its introduction as a Bill—so states the preamble—"for the better discovery of Popish recusants and repressing all usurped and foreign power, and preserving the King and Queen's Majesties in their persons, and the more assured support of the Government," to the more elaborate and stringent form which it assumed in the Statute book. Of the original Bill, simply substituting the new Oaths, as required from members, for those of Allegiance and Supremacy, nothing but the title was ultimately retained. The House, after instructing a Select Committee, of which Nottingham was chairman, to abolish the sacramental test, as a qualification for office, rejected the clause added for that purpose, and the clause empowering the King to tender the new Oaths, by means of Commissioners, to such as he should think fit, which had been inserted at Nottingham's instance, was also thrown out on report by 37 to 24. As to the form of the new Oaths and Declaration there was no disagreement, and both were adopted by the Lords from the Bill first sent up from the Commons. The Peers also declined to entertain a proviso exempting the members of their body from the special penalties imposed by the Act, and ultimately, in deference to the Commons, who insisted that the new Oaths should be tendered to all alike in open Court, waived the clause proposing that they should be tendered to the Lords at their own houses by two Deputy-Lieutenants, on their giving notice of their intention to take them. The final section of the Act, enabling the King to allow twelve of the non-juring clergy one-third of their benefices for their subsistence, was

carried by a majority of only three (No. 33). A proviso authorising the King to dispense with the Oaths, but not the Declaration, in the case of warrant officers in the Navy was rejected by the Commons; the administration of the Oaths required from Commission Officers in the Army was regulated by a Lords' Bill which passed in the following July (No. 93). An attempt was afterwards made by the Lords (2 Nov.) to relieve from the penalties of suspension those holders of ecclesiastical office who had failed, by reason of absence, want of Quarter Sessions or other causes, to take the new Oaths before the 1st of August 1689, and to extend the time for so doing to the 1st of February following, but the Bill was laid aside, after a second reading, in the Commons (No. 156). The abrogation of the Oath of Supremacy in Ireland was not enacted until 1691; but there is a Lords' Bill for that purpose which was introduced in January 1689-90, but dropped with the Session (No. 221).

On Feb. 27, four days after the Convention had been made a Parliament, the House was moved for leave to bring in two Bills, one "for the ease of tender consciences," as it was then described, and the other "for the uniting of Protestants." Of these two memorable Bills, both presented at the King's desire by Nottingham, the first, being the Toleration Act (No. 19), was introduced the next day, and the second, or Comprehension Bill (No. 32), on the 11th of March. With regard to the former, the papers show clearly the part taken by each House during its passage into law. The Lords, who amended the Bill largely in Committee, rejected on the third reading a proviso, which was also rejected afterwards by the Commons, for making it temporary. With regard to the Comprehension Bill, the full text, with all its alterations in Committee and on report, can now be read in the amended draft, forming the original House Bill, which was first exhumed and inspected, but only partially noticed, by Macaulay. The MS. Minutes show that Burnet's amendment, allowing the established clergy, in the Declaration substituted for the 39 Articles, to subscribe, instead of their approval of, their submission and promise of conformity to, the doctrine, worship, and government of the Church of England, was carried by no less than 35 to 3. Two other divisions, however, each deciding the question in the negative by an equality of votes, show how even was the balance of opinion in regard to this Bill. The first related to a clause dispensing with kneeling at the Sacra-

ment, the omission of which by the Committee was disagreed to, after a vehement debate, on report, and which was accordingly reinserted, with the addition, however, of an amendment providing that the person receiving it sitting should receive it "in a pew or seat in the Church." In the second case, the House refused to add lay members to the Royal Commission, consisting of 20—increased by an amendment to 30—of the clergy, which was appointed for reforming the Liturgy.* A special clause in the Toleration Act (§ iv.) had provided against exempting Dissenters from the payment of tithes or any other duties to the Church. The recovery of these, however, especially in regard to small tithes and Church rates, had been a constant source of dispute and litigation (an appeal connected with the subject will be found under No. 165) and was still a question awaiting settlement by law. Five attempts had been already made since 1675 to deal with the subject, as well as those of the repair of churches and the passing of churchwardens' accounts, but all of those Bills, three of which had originated in the Lords and two in the Commons, had proved abortive, and the question, so far as small tithes were concerned, was not settled till the Act of 1696. Three more Bills of this description will be found in the Calendar, viz., No. 126 (29 June 1689), No. 152 (30 Oct. 1689), and No. 234 (24 March 1689–90), all of which dropped ultimately in the Commons, with whom the first two originated. The text of these Bills, with the accompanying papers, explains the differences between the two Houses, and the difficulties of the subject, that delayed the solution of these vexed questions, which even then formed a prominent grievance of the Dissenters.

As regards the Papists, the distrust of whom was quickened by the fear of Jacobite conspiracies, the Peers had made an Order during the Interregnum (Dec. 22) commanding them to leave London, and a Declaration of the Prince of Orange (Jan. 14) directed search to be made with the view of proceeding against those who remained. These proceedings were followed up by the Lords at the first meeting of the Convention (Jan. 23), by the appointment of a Committee. The returns of a house-to-

* Here, as often elsewhere, Burnet, though taking a leading part in these proceedings, is inaccurate. He says that the question was decided by a "small majority," and that the plan of a Commission was offered as a separate proviso. The clause in question formed part of the original Bill. The votes on each side were 29; but proxies really turned the scale, there being 2 for the Not-Contents and 1 for the Contents.

house search by the constables, which were produced before them, give a total of about 2,500 Papist householders of less than three years standing (No. 6). To this committee, who examined a number of suspected persons, among others, on the information of Lord Lovelace, the supposed bearer of a message from James to the Earl of Peterborough, announcing his intended descent on Ireland (No. 30), was referred the Lords' Bill for removing Papists from town, which was brought in on 1 March and received the Royal Assent on 24 April. The amended draft shows the text of this Bill as sent to the Commons, including the proviso, as originally added by this committee, in favour of the Queen Dowager, which was superseded, after a Conference, by the compromise contained in the Act (No. 20). The practice of evading the Test Act by making gifts and grants to trustees for the use of Papist officeholders led to a Bill, which was introduced in the Lords on April 3, but dropped, after a long debate, in Committee (No. 48).

On 1 June 1689 the Bill was introduced in the Lords for vesting in the two Universities the presentations of benefices belonging to Papists, and passed into law (No. 90). This Act was specially excepted in a Bill, introduced the next session (19 Dec. 1689) in the Lords, "for exempting their Majesties' Popish subjects from the penalties of certain laws," a solitary but abortive measure of relief to the Papists, which aimed at extending to them experimentally for two years the like exemptions as had been granted to Dissenters by the Toleration Act, except in regard to the public exercise of their religion, on condition of their taking an Oath of Fidelity. Strangely enough, the drafting of this Bill was entrusted to a committee appointed "to enforce the laws against Papists and to prepare a Bill to remedy them where defective," who had reported an Address upon the recent Act for removing them from town (No. 194).

The first Habeas Corpus Suspension Act, which expired on 25 May 1689, had originated in the receipt of some intercepted letters by the King, who thereupon arrested the Earl of Arran, Sir Robert Hamilton and two others, and informed the Lords by message of his having done so. The Bill empowering him to "apprehend and detain all disaffected persons" was brought in by the Commons, who thought it more legal to proceed by enactment instead of by Address, as proposed by the Lords. The second Bill for suspending the Habeas Corpus Act, which

passed through both Houses and received the Royal Assent in one day (April 24), had a similar origin, the Lords, who were the authors of this measure (No. 70), having begun their proceedings that day by reading some letters, including two from James himself, which the King had received from the Duke of Hamilton, and ordered Nottingham to communicate to the House. Their titles are given in the Commons' Journal and the Lords' MS. Minutes, but the letters themselves are not preserved in this collection. There is the Bill, however, in the handwriting of Chief Baron Atkyns, which the House gave leave the same day to introduce, making it high treason to correspond with James or assert his title by word or writing. It was enlarged in Committee by adding, among other things, some clauses relating to the procedure in trials for treason, but was rejected, after a second reading, by the Commons (No. 71). Another batch of "intercepted letters," the originals of which remain, was communicated to the Lords after they had gone into Committee on the State of the Nation (June 15), and appointed a Sub-Committee to prepare an Address for the garrisons to be put in repair, for disarming the Papists, and for inquiring into the miscarriages in Ireland. These letters, three of which are from James himself, in a disguised hand, are referred to by Ralph, but have never hitherto been published. There is also a letter of James, dated Dublin, 16 May 1689, to the Scotch Convention. The papers and entries connected with this inquiry, particularly those relating to Ireland, are full of interest. They include the extracts from the Minute Book of the Irish Committee of Council, which were reluctantly, and after much delay, communicated by the King to the House and referred to a Committee of Inspection (No. 101). The entries in connexion with the case of Lord Griffin (June 8), who was committed to the Tower in the following November on the charge of corresponding with the King's enemies, deserve notice as confirming the story of his concealing certain treasonable letters in the false bottom of a pewter pot. The letters themselves are not among the records, having been delivered back to the Earl of Shrewsbury, as Secretary of State, in view of the prosecution directed by the King (No. 97). On June 26 the Articles of High Treason were brought up from the Commons against Sir Adam Blair and others for dispersing King James's Declaration lately published in Ireland. The Lords, after referring the matter to a Select Committee, who heard the

Judges on the question whether the statute of Edward III., relied on as a precedent, was still in force, decided by 3 votes on the previous question (the scale being turned by proxies) that the Statute did not debar them from trying a Commoner, and then resolved, but only by 1 vote, to proceed on the impeachment (Nos. 107, 118). Two Bills, which dropped with the Prorogation on August 20, mark the further zeal of the Commons against the adherents of James. One of these, the text of which exists, was a Bill for the better securing of the Government against Papists and other disaffected persons (No. 142). The other, which the Commons sent three messages to expedite, was a Bill "for attainting several persons now in rebellion against his Majesty." The Bill itself is wanting, having remained with the Commons, to whom it was returned, largely amended, the day before the session ended; but the names of the persons, 20 in number, who are required by it, under pain of forfeiture, to surrender by the 24th of the following August (a period extended by the Lords to October), can be ascertained from the papers that exist. The Lords, who refused to attain anyone except on proof of the fact by two witnesses, struck out seven names,* but added, it appears, E. Tyrconnell, Col. Richard Hamilton, Louis Doe, and Lord Antrim. Their other amendments include a clause on behalf of Protestants, inserted at the instance of a deputation of Irish gentlemen, headed by Lord Massareene, who were heard in Committee, as well as provisoes for securing the loyal creditors or reversioners of the persons proposed to be attainted (No. 129). Under date 21 Jan. 1689-90 will be found the text of a Commons' Bill, which dropped with the session in the Lords, for vesting in the new Sovereigns the estate of the late Queen Consort of James II. (No. 217).

The two Houses, which had separated on Aug. 20, 1689, met again on Oct. 19, Chief Baron Atkyns now occupying the woolsack as Speaker in place of Halifax, who had retired. The sitting, however, lasted only two days, both Houses being prorogued on the 21st to the 23rd, to enable the re-introduction of the Bill of Rights. The Bill which had dropped in the previous session is wanting, having been returned to the Commons; but its text can be traced by the proceedings in

* The names struck out are given by Oldmixon, III. 15. With this exception, the Bill has scarcely been noticed by historians.

Committee. It had been lost in consequence of the Lords' amendment in favour of the House of Brunswick, to which, it appears, they adhered by 38 to 29. The Bill now re-introduced was speedily passed, the Lords no longer insisting on this point (No. 174). The debates in Committee on this Bill gave birth to two important measures, the Triennial Act Revival Bill and the *Non obstantes* Bill. The first of these, as drafted by Chief Justice Pollexfen by direction of the Committee (No. 171), simply revived the Act of 16 Car. I. c. 1, which had been repealed, as injurious to the royal prerogative, by 16 Car. II. c. 1. This draft however, was rejected on report, as insufficient to meet the difficulties of the case, and the result was a new and elaborate Bill, which, after being partially considered and amended in a Select Committee, dropped with the Prorogation on 27 Jan. 1689-90 (No. 191), and the subject was not finally dealt with till the Act of 1694. With regard to the *Non obstantes* Bill, the Lords had consulted the Judges on the question of the dispensing power during the debate on the Declaration of Rights, and again in connexion with the clause making *Non obstantes* void, which was contained in the first Bill of Rights, and which they agreed to strike out, the Judges being ordered to prepare a separate Bill on the subject. The clause reappeared in the Bill of Rights this session, and was passed with an amendment excepting such cases as "should be specially provided for by one or more Bills to be passed during the present session." The Bill foreshadowed in this amendment was introduced in the Lords on Dec. 5, but dropped after commitment (No. 183). Another Bill, which was ordered to be drawn by the Judges, but which does not appear to have been presented, was intended to restore to corporations, and especially to the City of London, the rights and franchises of which they had been deprived in 1684 by the compulsory surrender of their charters. A mass of information on this subject, as well as that of the grant of dispensations and pardons by Charles II. and James II., will be found in connexion with the Committee of Inspections, or "Murder Committee," as it was called, which had been appointed on 2 Nov. to "examine into " the deaths of Lord Russell, Col. Sidney, Sir Thos. Armstrong, " Alderman Cornish, and others, as well as to who were the " promoters of the *Quo Warrantos* against the City Charters, and " the regulators and public assertors of the dispensing power"; and whose sittings, with E. Stamford as chairman, lasted from Nov. 6 to Dec. 13 (No. 154). The Corporations Restoration Bill of the

Commons, stripped, after a stubborn contest, of the clauses of Sacheverell and Howard, was brought up to the Lords on 11 Jan. 1689-90. The Bill declared the late surrenders to be illegal and void, and the Lords in Committee of the Whole House took the opinions of the Judges on the question whether the surrender of a corporation *per se* was good and valid in law or not. These opinions are recorded at length. The two Chief Justices differed; the Chief Baron Atkyns agreed with Pollexfen and the majority, including all the Judges consulted except Holt, Gregory, and Eyre, that a corporation could not surrender. The Committee by an equality of votes (37 on each side) decided not to retain the declaratory words in the Bill, but their decision was reversed, on report, by 51 to 43, proxies turning the scale. After this, the Bill dropped with the Prorogation on the 27th Jan. (No. 208).

The papers relating more particularly to the judicature of the House deserve a separate notice. In the work of inquiry and reparation, which formed the sequel, under Whig ascendancy, of the political prosecutions of the previous reigns, the Lords took a leading part. Their arrest, at the first sitting of the Convention, of the three persons—Major Hawley, a warder of the Tower, and a former footman of Lord Sunderland—accused by Braddon of having murdered the Earl of Essex, was followed up by the appointment of a Committee, superseded, after taking some evidence, by a Secret Committee consisting of Devonshire, Delamere, Mordaunt and Bedford, of whose proceedings, however, no record is found to exist, beyond a list of the witnesses whose depositions they reported. The Committee was revived the next session, but the Prorogation prevented any final report (No. 13). A succession of Private Acts, the drafts of which bear the King's signature, reversed the attainders of Russell, Sidney, Lisle and Cornish (Nos. 25, 69, 67, 96), proof being given, in the case of Russell, of the refusal of his demand for a jury of freeholders, and, in the case of Cornish, of the perjury of his accuser, Colonel Rumsey. There is the text of a similar Bill on behalf of Lieut.-Col. Walcot, which was laid aside in the Commons (No. 157). With regard to the formal inquiry conducted by the "Murder Committee," the notes of evidence contain some items of interest not found in the report of Informations as printed in the Journal, among these being a statement by Dr. Tillotson as to Lord Halifax, the chief object of attack in this inquiry, that he had never heard Lady Russell say anything against him (No. 154). The evidence then given

by Cragg, a former agent between the Duke of Monmouth's supporters in England and the Duke in Holland, appears to have occasioned the appointment of another Committee to inquire into the alleged subornation of witnesses against Lords Devonshire, Stamford, Macclesfield and Delamere. Cragg's Information, implicating these peers, which he had given before James and his Council at Whitehall, but which he now declared had been extorted from him, under promise of reward, by Jeffreys, Graham, Burton and Bridgeman, the Clerk of the Council, is among these papers, and shows the futile efforts made by the Duke's friends in England to dissuade him from a premature descent when "there was not five pounds to be had, " for all people of interest were unwilling to part with a penny " (No. 196). Sir Samuel Barnardiston, who figures in this Information as a person to be prevailed upon by Hampden to lend money to the Duke, obtained, on a writ of error, a reversal of his judgment for libel, his fine of 10,000*l.*, of which 4,000*l.* still remained unpaid, being declared by Chief Justice Holt to be outrageous (No. 64). In the case of Pilkington, whose appeal was allowed by 26 to 19, the House demanded from his Judges an explanation, which is here recorded, of their sentence (No. 110). The informer Prance, who had, like Oates, been pilloried for perjury, but had escaped a whipping, attempted to fly after the retirement of James, and was arrested at Gravesend, together with a Popish priest, on board a hoy bound for Dunkirk (No. 36). Oates, after setting forth his grievances in a petition addressed first to the Lords (No. 31), and afterwards to both Houses, in a paper which the Lords declared a breach of privilege, brought his appeal by two writs of error against the King and one against the Duke of York. The minutes of proceedings at the hearing, when, as in the cases of Barnardiston and Pilkington, no counsel appeared for the Crown, state the reasons given by Holloway and Withens for their sentence and the opinions of the nine Judges who were consulted, against it, a sentence which the House, nevertheless, affirmed, after a division on the previous question, by a majority of 12 (Nos. 49, 50, 51, 54). The Bill for reversing this judgment does not exist, having been returned to the Commons, but its history can now be clearly traced. The struggle turned on the preamble, declaring the verdicts to be corrupt and the judgment of the King's Bench to be erroneous. The first and chief objection of the Lords, which, after two divisions, each determined by

proxies, caused the recommitment of the Bill and ultimately led to its abandonment, was to the allegation that the verdicts were corrupt, a point which, in fact, was never proved. The peers were content to stultify their own judgment on appeal, by admitting that the judgment below, which they had affirmed, was erroneous, and to add a clause enacting that the like excessive punishments should never be inflicted again, though a difficulty arose in reconciling this admission with their proviso incapacitating Oates from appearing as a witness in future. The difficulty was met by a curious amendment to the proviso, suggested to a Sub-Committee by the Judges, making his incapacity continue only until the matters for which he had been convicted of perjury should be "heard and determined by Parliament," thus apparently ignoring the recent judgment of the Lords and leaving his conviction open to future review. The Bill as amended, after a series of divisions in Committee, was agreed to by a majority of 11 on report. A conference and then a free conference ensued. The result of the former was the Lords' adherence to their amendment refusing to recognise the corruption of the jury, a minority of 7 among the 55 peers present being converted into a majority of one by proxies. The result of the Free Conference, at which the Lords appear to have argued mainly on the want of evidence to prove corruption, was the final resolution to insist on their amendments, after a division, in a House of 66 members, in which proxies increased the majority from 2 to 10 (No. 138).*

The grievances of the peers, in relation to their trials, were taken up immediately after the Revolution. One of these was the constitution, during the recess of Parliament, in cases of treason, felony, or misprision, of the Court of the Lord High Steward, whose practice of selecting only a limited number of peers as triers tended to pack the tribunal in the interests of the Crown or the party in power. The trial of Lord Delamere in 1686, though it ended in his acquittal, seems to have been the occasion of a fresh attempt to legislate on this subject. A Bill introduced on 26 Feb. 1688-9 provided that 51 peers should be summoned, of whom 35 at least should appear. The Select Com-

* Macaulay, quoting Luttrell's and Clarendon's diaries, states that the majority was 12, of whom 10 were proxies. Strangely enough, his investigation of the archives of the House did not extend to the Minute Books, which in this, as in other cases relating to divisions, would have corrected the authorities that misled him.

mittee, to whom the Bill was first referred, after agreeing to an amendment requiring that all the peers should be summoned—a requirement rejected by the Commons at the conferences on the Bill of 1691, but embodied, with their assent, in the Act of 1695—substituted a new clause providing that 61 peers should be summoned, of whom 44 should appear, and giving the accused a right to challenge peremptorily 20 out of the 44. This clause, rejected in a Committee of the whole House by a majority of two, was reinstated by a majority of three on their report, when the House finally accepted the Bill, now extended to commoners, and entitled one “for the regulation of trials,” as re-drafted for the Select Committee by Sir Creswell Levinz. Two witnesses were required of express overt acts of treason, except in cases concerning the King’s coin, and provisions were added to the original Bill respecting the qualification of jurors, the furnishing of a copy of the indictment to the accused, the assigning of counsel by the Court, and the abolition of criminal prosecutions by way of information (No. 18). This Bill, which, in regard to these additional provisions, largely anticipated the settlement of the law of treason by the Act of 1695, dropped eventually in the Commons, but the peers in the next session re-asserted their right to a trial in full Parliament for all capital offences except murder and felony by a resolution, enrolled as a standing order, which was carried, after debate,* by a majority of 18 (No. 204).

With regard to misdemeanours, the peers had always submitted to be tried, like commoners, by a jury. The proceedings, however, of the Court of King’s Bench against Lord Lovelace, the Duke of Grafton, the seven Bishops, and the Earl of Devonshire were arraigned by Lord Macclesfield in the Committee for Privileges at their first meeting after the Revolution. The inquiry that followed was confined to the case of the Earl of Devonshire, the other Lords, who were also desired to deliver statements of their cases, either refusing or not caring to do so. The House, as is known, resolved that the proceedings against the Earl were an invasion of privilege, and after hearing the Judges, whose opinions are recorded, declared further that his commitment on the fine of 30,000*l.* was illegal. Two incidents of this inquiry

* The MS. Minutes record a curious order, made during this debate, forbidding any Lord to “go to the fire” without leave of the House. The order, like another one, prohibiting the peers’ footmen from “lying on the tables in the Painted Chamber,” was evidently considered inappropriate to the dignity of the printed Journals.

show the species of control which the Lords still asserted over the superior courts. One of these was the appearance at the Bar of Justices Wright and Holloway, in obedience to an order made by the House, not as a court of appeal, but in the exercise of an original jurisdiction, requiring them to give reasons for their judgment—a demand which, when repeated in 1692, was resisted by Chief Justice Holt, on the ground that his judgment could only be impeached by a writ of error.* The other was the appointment of a committee “to examine complaints of delays and grievances,” a precedent being exhumed in an Act of Edward III., under which a commission, composed of two earls, a prelate, and two barons, had occasionally been instituted to visit the Courts at Westminster Hall, and see wherein there was any failure of justice (No. 62). This particular committee does not appear to have met, but the question was revived the next session in the Committee for Privileges, who were directed to inquire into irregularities in the Courts of Westminster Hall. This inquiry was afterwards extended to the Court of Chancery, the Courts of the Grand Sessions in Wales, and the Courts of the Counties Palatine; a proposal was also made to include the Ecclesiastical Courts, but dropped after an adjourned debate. No final report was ever made, but a host of grievances were disclosed. The Judges were accused of taking large sums of officers upon sale and administration and new year’s gifts, robes of the City of London, and fees of private persons; of conveying freeholds of offices, held only for life, of the value of more than 100,000*l.*, and of levying charges, under the pretence of a *Capias*, without accounting to the King. The officers of the courts were accused of packing juries for bribes, of setting malicious informations on foot, of multiplying proceedings and delaying actions, and of smothering presentments against notorious criminals. Complaint was made of the fees demanded in the Marshalsea, which were stated to bring in more than 5,000*l.* a year to the Marshal, and the Clerk of the King’s Silver Office charged the Judges of the Common Pleas with demanding a fee unwarranted by custom. A proposal to limit to a certain sum the fees paid to counsel for arguing at the Bar of the House was abandoned, but full lists were delivered in of those payable to the officers of the various courts (No. 160). Particulars are given of a dispute between the Duke of Grafton and Chief Justice Pollexfen,

* 12 State Trials, 1167.

respecting the profits of the office of the Clerk of the Treasury and Keeper of the Records of the Common Pleas, to which the Duke, through his deputy, was declared entitled, as patentee under a grant of the office for life by Charles II. (No. 94). A somewhat similar complaint appears in a petition of Chief Baron Atkyns against the recently appointed Commissioners of the Great Seal, for depriving him of the fees payable, in respect of levying fines, on signing writs of *Dedimus Potestatem* for the cursitors, a matter which, after a hearing in the Committee for Privileges, was agreed to be referred to the two Chief Justices (No. 104). The history of the Act appointing the new Commissioners can be traced in the various papers of amendments (No. 39).

The Act abolishing the Court at Ludlow removed a popular Welsh grievance of long standing, as to which some interesting evidence was given in Committee. A petition complaining of the Court as useless and oppressive, contains nearly 18,000 signatures from various towns and parishes in Wales, written on a number of sheets, which were afterwards collected and pasted together; the whole forming the earliest "monster petition" found among the records (No. 80). The preamble of a Bill for erecting a Court of Conscience in Norwich for the recovery of small debts (No. 195) recites the successful working of an Act already existing for that purpose in London. This Bill, like another and similar one for Greenwich (No. 198), was rejected by the Lords, but eventually passed into law in 1701.

In connexion with the Act abolishing Hearth-money, a grievance which William had specially promised to remove, there is a petition of the Earl of Suffolk's brother for securing a balance of 20,000*l.* left unpaid by Charles II. out of the 50,000*l.* due for the purchase of the palace of Audley End in 1661, and charged on the revenue derived from this impost. A proviso for this purpose was agreed to in Committee, but rejected by the House on report (No. 63). The Lords' Amendments to the Bill, afterwards an Act, for prohibiting trade with France—a revival of a similar prohibition which had lasted from 1677 to 1685—have been deciphered, so far as is possible, under the erasures on the original Roll. A motion to instruct the Select Committee to give the King a dispensing power in regard to this Act was defeated by a majority of only seven. Some petitions of the Merchants and Vintners, who were heard by counsel in Committee, set forth the

injuries inflicted by this prohibition on the wine trade (No. 134). The Act condemned all French goods, illegally imported, to be burnt and destroyed. The want of salt, however, for provisioning the Navy, occasioned two attempts to exempt this article from its penalties. The first of these was a Lords' Bill, rejected after a first reading, for applying to this purpose a cargo of French salt, which had been captured at sea and condemned as prize in the Court of Admiralty (No. 175). The second was a Commons' Bill, which was never read in the Lords, handing over all such seizures to the Commissioners for Victualling the Navy, and offering a reward to private captors (No. 207). A variety of petitions serve to illustrate the provisions of the Act for preventing the exportation of wool, a clause of which, enabling any person to export home-made woollen manufactures, was opposed by the Eastland, African, and Russia Companies, as interfering with their privileges (No. 136). There is also the text of the Commons' Bill, enjoining, among other things, the wearing of woollen manufactures for six months in the year, which occasioned the weavers' riot. The Lords, after refusing, by a majority of six in a House of only 24 members present, to put the question for rejecting the Bill, rejected it two days afterwards unanimously. The weavers' complaints, as well as those of the mercers and makers of straw hats, are embodied in separate petitions against the measure. The King, in his answer to the Address for the assistance of the Guards to quell the rabble, approved the action of the House in ordering out the Train Bands in the first instance, and promised to support them with the Guards if necessary (Nos. 139, 140). The Bill imposing new Customs duties on coffee, cocoa, tea, and chocolate is not among the records, having been returned to the Commons, but some information appears as to the clause, added on report after re-commitment, at the instance of the coffee merchants, which led to the Bill being dropped after two conferences (No. 121). In connexion with the leather trade, there are the proceedings relating to two Bills, each of which passed into law; one being a Bill promoted by the curriers and opposed by the shoemakers, leather merchants, and tanners (No. 87), and the other a reviving Bill for enabling the exportation of unwrought leather, which was opposed by the cordwainers and the shoemakers of Northampton (No. 91).

Some new matter of interest to the military historian is supplied by the Commons' Bill of 1689 for re-organising the

Militia, a question then much in favour with the Whigs, owing to their jealousy of the standing army, but not settled by Statute till the middle of the next century. The Bill consolidated the Acts of Charles II., by which the constitution of the force was governed, but with important variations and additions, tending, as was objected, to lessen the authority of the Lord Lieutenants, who were generally peers, and to depress the prerogative of the Crown. It failed to pass into law, not, however, from the Lords' refusing, as Burnet alleges, to consider it, for it was amended and re-amended in Committee and on report, but in consequence of the Prorogation on 17th August, which, from the King's known aversion to the Bill, it probably contributed to hasten (No. 120). The second of the long series of Mutiny Acts originated, the next session, in the Lords, who extended in Committee the death penalty to cases of fraudulent re-enlistment; the cutting off an ear in addition to imprisonment, as a punishment for false musters, was an amendment added by the Commons. The Bill was not introduced till Nov. 12, two days after the first Mutiny Act had expired, and a further break of 28 days occurred before the day fixed for its coming into operation (Dec. 20), which was three days before it actually received the Royal Assent (No. 164).

The last public measure introduced in the Lords before the close of the Convention Parliament (27 Jan. 1689-90) was a Bill for the more effective administration of the Poor-laws, the neglect of which, as the preamble recited, had encouraged idleness and increased the number of the poor. The Bill, hitherto unnoticed because unknown, contains some curious provisions for licensing parish beggars, the penalty of a public whipping being imposed on those who begged without having the necessary badge, as well as for preventing the overseers of the poor from misspending the parish funds in eating, drinking, and entertaining, for suppressing disorderly ale-houses, etc., and for enforcing the laws respecting servants and apprentices (No. 222). It dropped with the Prorogation, after a second reading.

A curious assertion of privilege appears in a report ordered by the Committee for Privileges shortly after the Revolution, but apparently never made, stating "that their Lordships find, by
 " the information of persons of great honour and credit, that
 " when the King was present at Plays and put on his hat, the
 " Peers of the realm there present did so likewise, and also at
 " such times when the King used to walk abroad covered, they

" did likewise cover." The question appears to have been raised by Lord Macclesfield, who complained that the Commons put on their hats as well as the Peers. Evidence was taken to show that in the time of Charles I. the peers and peeresses only sat in the cock-pit at the Play-house and remained covered, and the Bishop of Winchester deposed that when Charles I. put on his hat in the King's chapel, he gave the sign to the Peers to do likewise. A proposal was made that the Lords should be covered in the House, when the King was present, as had happened once already during the reading of a Commission. Other grievances were mentioned, such as the discontinuance of creation money and of New Year's gifts from the King; but the matter dropped at this stage and was probably considered unworthy of notice by the House (No. 61).

The question of legislating for the prevention of clandestine marriages by minors was revived in 1689 in consequence of a marriage of Christopher Monk, a boy under 14, then a pupil at a M. Foubert's "academy" in the Haymarket (where the names of Foubert's Passage and Foubert's Court still survive), and the relative and reputed heir of the recently-deceased Duke of Albemarle, with the daughter of a pastry-cook in Lime Street, whose wife was alleged to have personated the boy's mother, and who is stated to have induced Christopher to conceal the marriage from his relations, so that "the exact time of his attaining the age of 14 years elapsed without his making any solemn renunciation of his marriage, which in strictness of law, he was bound to do." Christopher brought a Bill to annul this marriage as fraudulent and made when he was under the influence of drink. The House, on report, rejected the Bill (No. 123), but the incident led to the re-introduction of a measure intended to deal with cases of this description. The Bill prepared by the Judges for this purpose on the model of a previous one of 1685, but largely amended in Committee, dropped in the Commons (No. 130), who, when the Bill was revived the next session (No. 145), refused to give it even a first reading.

Particulars of local and personal interest are found in a number of miscellaneous papers, a few of which may be noticed in conclusion. In the Bill for naturalising Prince George of Denmark, which was re-introduced, after having been withdrawn to enable an Act first to be passed for exhibiting it, the Prince's claim to have two additional bars of "ermine extraordinary" to mark his precedence over other Dukes, was disallowed after

evidence from the Herald (Nos. 42, 47). Among a batch of French Protestants proposed to be naturalised by another Bill appears the name of "David Garric, son of Peter and Madelena Garric, of Montpellier." This would seem to have been the grandfather of the famous comedian (No. 218). There is a Bill to cancel a will and settlement made in favour of the testator's natural children (No. 211), and an Illegitimation Bill, rejected on second reading, after taking the evidence of two doctors present at the death-bed of the wife, then a widow, when her alleged confession of infidelity was made (No. 100). A Bill for reconstituting the College of Physicians deals with a dispute occasioned by the surrender of the original charter granted to the College by Henry VIII., on its foundation by Cardinal Wolsey's physician, Dr. Linaere. The Bill dropped, but not until amendments had been inserted to prevent the admission of Papists, some of whom were alleged to have promoted it (No. 95). There is a petition of the Duke of Norfolk, which was granted by the House after consulting the Judges, to stay the sale of part of the famous Arundel collection, then advertised for public auction at the instance of Col. Maxwell, who had married the widow of Petitioner's father (No. 7). Thomas, Earl of Pembroke, the purchaser of that portion which still adorns the galleries of Wilton House,* figures in connexion with the creditors of his brother and predecessor in title, in a case of complaint in which the House refused to allow him privilege as a trustee (No. 189). The complaint, like many others, arose out of a judgment of Lord Jeffreys, a relative by marriage of the Earl; there is an appeal from an order signed by him "at his lodgings at Whitehall," on the eve of his flight to Wapping (No. 159). Some litigation occurs in connexion with a grant by Letters Patent of Charles I. to Sir John Meldrum of the fees payable for maintaining two newly-erected lighthouses on the North and South Foreland (No. 203), and with two financial transactions of Charles II., one being a farm of the revenue of the liquor excise from 1677. to 1680, demised to certain persons at a rent of 560,000*l.* a year, in consideration of a loan of 200,000*l.* (No. 147), and the other a Commission to certain Undertakers to manage the revenue in Ireland from

* Michaelis' *Ancient Marbles in Great Britain*, p. 36. Most of what was left in the garden of Arundel House appears to have been bought in 1691 by Sir William Fermor, afterwards Lord Lempster. Evelyn, *Diary*, 21 March 1691.

1670 to 1675 (No. 214). The names of the Counsel engaged in the Appeals are recorded, together with rough notes of the proceedings, in the Minute Books; an instance of the authority exercised over them by the House occurs in a case where Sir William Williams and Sir Samuel Porter, who had failed to appear when the cause was called on for hearing, were ordered (though the order was subsequently softened into a reprimand on their appearance) to pay a fine of 10*l*. to the Respondent, under pain of not being heard as Counsel in future (No. 167).

E. FAIRFAX TAYLOR.
FELIX SKENE.

ABBREVIATIONS USED IN THE FOLLOWING CALENDAR.

MS. Min.—MS. Books containing Minutes of the proceedings in the House, and intituled "Journal."

Com. Book.—MS. Books containing Minutes of the proceedings of Select Committees.

Pet. Book.—MS. Books containing Minutes of the proceedings of the Committee for Petitions.

Priv. Book.—MS. Books containing Minutes of the proceedings of the Committee for Privileges.

HISTORICAL MANUSCRIPTS COMMISSION.

THE MANUSCRIPTS OF THE HOUSE OF LORDS.

1688-9.

1. Jan. 17. Garter's Roll.—A List of the Nobility of England according to their respective Precedencies, prepared and signed this day by Sir Thomas St. George, Kn^t Garter. *Parchment Collection.*

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2. Jan. 22. Test Roll (25 Car. II. c. 2).—Roll for the Parliament begun this day, containing the signatures (2) of Lords to the Declaration in the Act of 1672 for preventing dangers which may happen from Popish Recusants. The first signature is Charles de Berkeley, 31 July 1689, and the second Bolton, *undated.* *Parchment Collection.*

3. Jan. 22. Test Roll (30 Car. II. Stat. 2. c. 1).—Roll for the Parliament begun this day, containing the signatures (118) of Lords to the Declaration in the Act of 1678 for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament. The first signature is Danby, P., 2 March 1688 (on which day 76 signatures appear),* and the last Rockingham, 25 Nov. 1689. *Parchment Collection.*

4. Jan. 22. Oaths Roll (1 W. & M. c. 1).—Copy Roll for the Parliament begun this day, giving the names (130) of the Lords who took the oaths in pursuance of the Act of 1688 for removing and preventing all questions and disputes concerning the assembly and meeting of this present Parliament. The first name is Tho. Earl of Danby, Lord President, 2 March 1688 (on which day 76 names appear),* and the last Edward, Lord Rockingham, 25 Nov. 1689. *Parchment Collection.*

5. 22 Jan. Prince of Orange.—Letter from the Prince of Orange to the House of Lords. *Signed* W. H. Prince d'Orange. L.J., XIV. 101-2. *In extenso.* [The MS. Min. state that it was delivered sealed, and then read twice. A note adds: Partridge of Charing Cross to print the Prince's letter. A Call of the House was ordered this day for the 25th, No. 9.]

Annexed :—

(a.) 22 Jan. Draft address of Thanks of both Houses to the Prince of Orange. L.J., XIV., 103. *In extenso.* [Drawn up by a Committee this day, after reading the Address of 25 Dec. (Com. Book) and sent to the Commons, whence it was returned by Mr. Hampden, Senr., and others, and delivered by them to the Marquess of Halifax at the bar, who came to his place and reported it. The Dukes of Norfolk and Ormond who waited on

* See No. 21, Note.

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the Prince this day, reported that they found him at the Cockpit and that he would be at St. James's so soon as their Lordships could come thither. MS. Min.]

(b.) 23 Jan. Prince of Orange's answer to preceding address. L.J. XIV. 103. *In extenso.*

6. Jan. 23. Papists in London.—Certificate of John Smith, Clerk of the Peace for the County of Middlesex, giving an account of what had been done in order to the removing of Papists ten miles from London. States that three warrants had been issued on the 8th inst. to the high constables of the Holborn, Finsbury, and Tower divisions, directing search to be made for all Popish Recusants, and notice to be given them to depart forthwith, according to the order of the House of 22 December last,* and a return of all such Popish Recusants to be delivered to the Justices at Hicks Hall on the 12th inst. This return was accordingly made, and three other warrants were issued on the 12th requiring the high constables to summon all Popish Recusants in their divisions to appear at Hicks Hall on the 17th inst. to show cause why they should not be prosecuted for staying in town contrary to law. On the 17th many of the papists appeared, and several of them showed the Justices' certificates that they were householders for three years, and had delivered in their names to the next justices of peace, and those persons and all those not appearing were then dismissed. Three other warrants were then issued on the 17th inst. to the said high constables, and another to the high constable of Kensington division (all of them reciting the contents of the Prince of Orange's Declaration of the 14th inst.), requiring them to search for all papists or reputed papists, nor excepted in their Lordships' said order, and to bring them to Hicks Hall on the 21st inst. to be proceeded against according to law, and in the meantime to give them notice to depart at their peril. On the 21st the high constables appeared at Hicks Hall and perfected their returns of the names of the papists and reputed papists in their divisions, being in all about 822 persons. Many of the papists and reputed papists then also appeared, and several alleged they were foreigners and resided in the Kingdom on account of trade only, and others claimed to be excepted in their Lordships' said order; but by reason of the shortness of time and the Convention of the Lords and Commons being on the morrow, the justices then present required the high constables to apprehend and bring before the next justices all such papists as they should find in their divisions contrary to their Lordships' said order and the Prince's Declaration, and dismissed those that then appeared, being unable particularly to examine them. The returns, together with a certificate to his Highness according to his Declaration, were then delivered by the justices to Sir Edmond Warcup, Chas. Osborne, Esq., and Thos. Owen, Esq., three of their number, to be delivered to his Highness' Secretary, Mr. Jepson last Monday afternoon, which has since been done. *Signed* John Smith, 25 January 1688-9. [The Committee for preventing Papists from staying in London, to whom this and the papers hereto annexed were delivered, was appointed this day L.J., XIV. 105. The above certificate was delivered to them on the 25th, pursuant to an order of the 24th. Mr. Bonithon, who, as steward of Westminster, had been required to give in a similar account, delivered in a paper and said he had nothing to do with the business. Ever since and before the King went away, the

* This order, with a list of Peers present on the 22nd, is printed in Somers's Tracts, X., p. 3. See also Luttrell's Diary.

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Justices had endeavoured to disarm the Papists. They had a list of all Papists in Westminster, and searched them for arms. Capt. Gilmore found the arms mentioned in his paper at Mrs. Carwell's, a Papist, in Baldwin Gardens. One Thos. Barlow brought the arms thither this morning, and said his Captain received them from L. Dartmouth, and gave bond to his Lordship to return them. *E. Lincoln* sent a letter concerning a menial servant of his, being a Papist, seized, whom the justices would not bail. The letter was read and given back, with a direction to bring it to the Committee for Privileges* on Monday. The House to be acquainted with the paper concerning the arms. (Com. Book 25 Jan.)—On the 28th *Capt. Gilmore* was called in and said that a constable on Thursday last told him that the arms were brought into a Papist's house by Serjeant Barlow, whence he and the constable removed them. *Capt. Kemish* told him that the arms were his. (Com. Book 28 Jan.) On report of the matter *eod. die* by *E. Chesterfield*, *E. Craven* acquainted the House that one *Capt. Kemish*, his servant, lodged the arms in the house where they were found. *Ordered*, That the Serjeant be examined before the Committee. (MS. Min. 28 Jan. No entry in L. J.)—On 1 Feb. *Capt. Kemish* being called in, informed the Committee that when his company was disbanded, they delivered up the arms they had there to those that disbanded them. The pole-axes found by Gilmore were brought to town to be returned to the Tower (from whence he received them) the next morning. His own lodging being small, he ordered his corporal Barlow to take them to his lodging for the night, which, it seemed, happened to be in a Papist's house. Produced an indenture whereby he was obliged to return the arms into the Tower. The hand-grenadoes were not mentioned in the indenture; he was not liable to account for them. *Richard Barlow*, called in, said he had lodged half a year in the house where he had placed the arms. His landlady went duly to church. He knew her not to be a Papist, but had heard that ten years ago she was a Papist. He lodged the arms in his own room. *The Constable* said he had heard that the landlady was a Papist; her husband, a Protestant, had once told him so. The Committee then ordered Gilmore and the constable to take the arms to the Tower, and *L. Craven* undertook to see that it was done. The Constable was directed to bring in an account of what Papists or reputed Papists were in his constablewick, and the Committee ordered that the high constables within Middlesex and Westminster should direct their petty constables to give them an account in writing before 5 Feb. of what Papists or reputed Papists, that had not been three years householders, were in their several parishes, and that the high constables should attend with the accounts on the 6th. (Com. Book 1 Feb.)—On 2 Feb. on report made by *L. Paget*, *L. Dartmouth* gave account that he had taken care for getting up the arms all over England, and there is a severity on those that embezzle them, it being felony. (MS. Min. 2 Feb.)—The Committee met again on 27 Feb., *L. Paget* in the chair, the quorum being reduced to three (Com. Book 27 Feb., L. J., XIV. 134), and on that and the following days to March 6 the high constables' returns (*Annexes e.*) were delivered in.—On 5 March *L. Paget* reported to have an assistant, and the House ordered Sir W. Dolben to attend the Committee. He reported further that the constables gave very lame accounts. Several arms of one Filkins were discovered, and belonged to the King. One Moleneux, a

* The Priv. Book contains no entry of proceedings.

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pawnbroker, had arms and belts. One Aisley, a priest, was in custody, but there was no proof against him. One Clarke was also in custody, against whom there were ill things sworn, but who says he is a Protestant. Some Papists that had lodgers refused to give accounts. (MS. Min. 5 March, L. J., XIV. 139).—On 9 March *E. Bridgewater* reported that two horses were taken by a constable at Papists' houses. Ordered, that the horses of Thos. Jones, Adjutant to Col. Warden, in the hands of Eaton, the constable, be discharged. (MS. Min. March 9.) The proceedings in the case of *Robert Clarke* are given under No. 30. The Committee then examined the case of *Colonel Dempsey*, who had a certificate under L. Newport's hand of the Prince's leave to stay in town. *Richard Clarke* stated that Dempsey, when Sir W. Waller was searching the house, endeavoured to get out on the leads. *Col. Dempsey*, being called in, said that L. Newport gave him the certificate. L. Rochester desired L. Newport to do it for him. I designed to go to Ostend to bring my five sons home from Flanders. I always said I would never draw a sword in Ireland while Tyreconnel was there. He is dismissed further attendance. (Com. Book *ib.*)—*Captain Mackinnis* was then called in. He says he is a Papist, and not a housekeeper. Produces a pass and letter from Sir Robert Holmes, dated 22 Jan., for his coming from the Isle of Wight to London. Has a Protestant wife, the sister of a bishop in the North of Ireland. He intends not for Ireland; he was of Col. Butler's regiment. He designs to go to Bayley near Coventry to a friend, whither he will send for his wife. Ensign Povey, he says, will pass his word that he shall not go for Ireland. Recalled and told that the Committee require him to appear on Monday morning before the Lord Mayor or some justice of the peace in the city, and give security for his retiring into the country, and that he shall not go for Ireland, but demean himself well in the country. (Com. Book *ib.*)—In the case of *Nevill Paine*, Sir W. Waller informed the Committee that Paine had several rooms in the Fleet, and great company came to him, and he was suspected to hold great correspondency, for he writes very much and gives great entertainment. Sir W. Waller desires an order to search his papers. Ordered, that Sir Thos. Duppa go with Sir W. Waller to the E. of Shrewsbury, Principal Secretary of State, and desire him to give Sir W. Waller a warrant to search Paine's lodgings for papers, and seize them and bring them before the Committee. (Com. Book *ib.*)—In the case of *Edward Aisley*, a priest (L. J., XIV. 137), *John Cliffe* deposed that he had orders from Major Manley to apprehend Aisley. *Richard Sweet* said he had often seen Aisley with the Irish officers in E. Lichfield's regiment, who told him he was their priest. Two letters from Jane Aisley, Edward Aisley's mother, were then read. *Edward Aisley*, being called in, said he had been a Roman Catholic above six years; he had taken no orders, nor ever owned he was a priest. He lived at Malta in Italy. He has been three or four months in town. His trunk was then searched, but nothing beyond five guineas being found in it, the trunk and contents were given back to him. (Com. Book *ib.*) *John Rochford*, Beadle of St. James' Parish, deposed that he knew nothing of Aisley (*ib.* 4 March).—On 16 March the House ordered the Committee, being then adjourned *sine die*, to meet on the 18th (L. J., XIV. 150); but no further proceedings appear in the Com. Book.]

Annexed:—

(a.) Jan. 25. Similar certificate of John Hardisty, Clerk of the Peace of the liberty of Westminster. States that the justices of Westminster met on the 7th inst., and upon reading their

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Lordships' Order of 22 December last, and considering the laws against papists, granted their first warrant annexed to the High Constable to search for and return the names of all papists found in their wards. These returns were made on the 9th, and afterwards certified to the Prince of Orange, a copy of which certificate is annexed. On the 7th the justices granted another warrant to apprehend all persons found breaking the peace or dangerous to the peace, to be proceeded with according to law. On the constables' returns being made, the justices granted a third warrant, annexed, to summon all papists before them, to shew cause why they should not be prosecuted for staying in town, and dismissed, after taking their names and addresses, all such as they found to be housekeepers or within the exceptions made by the laws and their Lordships' Order. Certifies also a copy of warrant annexed, dated 14th inst., whereby the justices commanded the constables to search for all papists, except those that are excepted by their Lordships' Order, and to bring them on the following Saturday, and give them notice to depart at their peril. The constable brought only a few papists that day, which is all that he knows further in the matter.

- (b.) Copies of three warrants referred to in preceding, viz^t: Nos. 1 and 2 dated 7 Jan., and No. 3 dated 9 Jan.
- (c.) Copy of fourth warrant, dated 14 Jan., and certificate to Prince of Orange, dated 19 Jan., both referred to above.
- (d.) Letter from J.D. to Mr. Bryan as follows: "Since Mr. Hardisty went to you I think there must be added to the account they gave the Lords, that on Monday night the authority to justices did determine, so that, if any do remain, they have no power to apprehend them, their warrants in the constables' hands being likewise at an end. Dated Thursday night (24 Jan.)." [The Com. Book of 28 Jan. states: Mr. Hardisty says that Mr. Due, a justice of peace, gave him a note to shew the Committee, wherein he says the justices' authority to act ceased on Monday last. The note is read: Ordered that the House be acquainted with this note to morrow.]
- (e.) 27 Feb. Petty constables' returns of the number of Papists in their respective wards that have not been three years' householders, delivered this day to Committee pursuant to Order of 1st Feb. Com. Book.

—	Return.	Dated.	Number of Papists.
1	St. Margaret's, Westminster, Long Ditch, West side, and Tothill Street, North side.	Feb. 5	4
2	" Petty France, S. side, and Cabbage Lane.	"	2
3	" Bowling Alley, W. side* - -	Jan. 8	3
4	St. Martin's, Charing Cross Ward† - -	Feb. 6	13

* This return includes one James Laport, concerning whom see annex (g), and Sir Chas. Slingsby, a lodger at Mr. Fachin's in Pye Street, distracted.

† Includes the name of Baldassare Artima, which appears in connexion with the Popish Plot.

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—	Return.	Dated.	Number of Papists.
5	St. Martin's, Spur Alley Ward - - -	Feb. 5	7
6	„ Exchange Ward - - -	Undated	2
7	„ Upper Ward - - -	Feb. 5	7
8	„ Drury Lane Ward - - -	„	4
9	„ Long Acre Ward - - -	„	10
10	„ New St. Ward - - -	Feb. 4	15
11	„ Castle St. Ward - - -	Undated	10
12	„ Suffolk St. Ward - - -	„	14
13	„ High Park Ward - - -	Feb. 5	9
14	St. James', Pall Mall Ward - - -	„	19
15	„ St. James' Ward - - -	Undated	19
16	„ Portugal St. Ward - - -	Feb. 5	14
17	„ Windmill St. Ward - - -	„	10
18	„ Rupert St. Ward - - -	Feb. 6	13
19	„ St. James' Market Ward - - -	Undated	5
20	St. Ann's, Church Ward - - -	Feb. 5	None.
21	„ King's Square Ward - - -	„	6
22	„ Cranbourne St. Ward - - -	„	2
23	„ Newport Ward - - -	Feb. 4	4
24	„ Gerrard St. Ward - - -	Feb. 5	6
25	„ Greek St. Ward - - -	„	None.
26	St. Paul's, Covent Garden, E. Division - -	Undated	18
27	„ Covent Garden, W. Division - -	Feb. 5	15
28	St. Clement Danes, Drury Lane Ward - -	„	3
29	„ Shere Lane Ward - - -	Jan. 5	1
30	„ Temple Bar Ward - - -	Feb. 5	3
31	„ Holywell Ward - - -	Jan. 5	8
32	Savoy - - - - -	Feb. 5	12
33	Long Ditch, E. side, etc. - - -	„	None.
34	King St., E. side, etc. - - -	„	„
35	Thieving Lane Ward - - -	„	„

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—	Return.	Dated.	Number of Papists.
36	Petty France Ward, North - - - -	Feb. 5	None.
37	„ South - - - -	„	„
38	Milbank, etc. - - - -	„	„
39	Return of J. Whitton, a constable of Westminster -	Undated	„
40	„ G. Wyat „ -	„	„
41	„ R. Warn „ -	„	„
42	„ J. Tompson - „ -	„	„
43	„ A. Kent - „ -	„	„

(f) $\frac{2}{6}$ March. Similar returns of all Papists or reputed Papists, and of horses and arms belonging to them, delivered to Committee pursuant to Orders of 27 Feb. Com. Book.

—	Return.	Dated.	Number of Papists.
1	St. Margaret's, Westminster, Sanctuary Ward* -	March 2	10
2	„ Great and Little Sanctuaries† -	„	2
3	„ Old and New Palaces - -	„	8
4	„ King St., E. side‡ - - -	„	3
5	„ „ N. side - - -	„	19
6	„ Thieving Lane - - -	„	4
7	„ Long Ditch Ward, W. side, etc. -	„	11
8	„ „ - - -	„	4
9	„ Petty France, North† - - -	„	4
10	„ Petty France§ - - -	„	9
11	„ „ South - - -	„	11
12	„ Bowling Alley, W. side - -	„	15

* Includes Mr. Smithies, the Library Keeper, and his man, in the cloisters. Constable knows of no horses or arms. Com. Book, 2 March.

† No horses or arms.

‡ One a gunsmith, Com. Book, 2 March.

§ Besides my Lady Stafford and her family, which she would not give account of. Com. Book, 2 March.

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—	Return.	Dated.	Number of Papists.
13	St. Margaret's, Horseferry Ward - - -	March 2	10
14	„ King Street, W. side, etc. - -	„	14
15	„ Knightsbridge - - -	„	7
16	St. Martin's, Westminster, High Park Ward - -	„	37*
17	„ Green St., Castle St., etc. - -	„	53
18	„ Spur Alley Ward - - -	Undated	30
19	„ Upper Ward - - -	March 2	46
20	„ Long Acre, Upper Ward - -	„	65
21	„ New Street Ward - - -	March 1	40†
22	„ Charing Cross Ward - - -	„ 2	47
23	„ Drury Lane Ward - - -	„ 4	25
24	„ Exchange Ward - - -	Undated	46
25	„ Suffolk St. Ward - - -	March 2	56
26	St. James', Pall Mall Ward - - -	Undated	48
27	„ St. James' Market Ward - - -	„	24
28	„ St. James' Ward - - -	„	46
29	„ Windmill St. Ward - - -	„	32
30	„ Rupert St. Ward - - -	March 2	34
31	„ Portugal Street Ward - - -	Undated	84
32	St. Ann's, Church Ward - - -	„	13
33	„ Greek St. Ward - - -	„	5
34	„ Gerrard St. Ward - - -	„	24‡
35	„ King's Square Ward - - -	„	22§
36	„ Newport Ward - - -	March 2	29
37	„ Cranbourne Street Ward - - -	Undated	29

* Besides Mr. Scudamore and his family. Com. Book, 4 March.

† The constable informed the Committee that Rich. Molyneux, a Papist in Long Acre, had above 20 swords and many carbine belts which he pretended were pawned to him by some of the late King's soldiers. Com. Book, 4 March.

‡ Including "Wm. Dayton (*Drayden* in c 24) Housekeeper, a Poet in Gerrard Street, having two sons, both of his own religion, and his wife."

§ The Constable added that there were two stables of horses, formerly Papists', now pretended to belong to one Sir — Cocke in St. James' Square, who had two Irish Popish servants. Com. Book., 4 March.

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—	Return.	Dated.	Number of Papists.
38	St. Paul's, Covent Garden, E. Division - -	March 2	60*
39	" " W. Division - -	" 4	74
40	St. Clement Danes, Drury Lane Ward - -	" 2	29
41	" Temple Bar Ward - -	" 1	22
42	" Shere Lane Ward - -	March 2	4
43	" Holywell Ward - -	"	24
44	St. Mary-le-Strand <i>alias</i> Savoy - -	"	28
45	Duchy Liberty, Royal Ward - -	Undated	18
46	" Middle Ward - -	"	16†
47	" Savoy Ward - -	"	18 women
48	Duchy Liberty, Savoy Ward - -	"	13 men.
49	St. Giles'-in-fields, Old Town Division - -	March 4	253‡
50	" Holborn End Division - -	"	100§
51	" Drury Lane Division - -	"	235
52	St. Andrew's, Holborn, Above Bars - -	"	47¶
53	" " Saffron Hill, etc. - -	"	23
54	Rolls Liberty - -	"	14
55	Tower Division, St. Mary, Whitechapel - -	March 5	31
56	" Spitalfields - -	"	46
57	" Norton Folgate - -	March 4	7
58	" Holywell St., Shoreditch - -	March 5	11
59	" Hoxton and Moorfields - -	"	4

* The Constable said that Mr. Coffin (in Bridges Street) had several Popish lodgers, whom he refused to name. This was ordered to be reported to the House. Com. Book, 4 March.

† Includes Hon. Charles Howard, who declares he is no Papist. If their Lordships are not satisfied with what he declares, he has promised to attend their summons. Mr. Nevison Fox, of Arundel Buildings, Surrey Street, alleges the same. Com. Book, 4 March.

‡ Besides 9 horses, 8 swords, and 2 pikes. The Constables add that they have discovered horse arms for a regiment in Mr. Filkin's house, near the Maidenhead in St. Giles, who is, upon the discovery, gone away with 4 good horses. Filkins was adjutant to Col. Slingsby, and lay at the Blue Posts in Pall Mall. Ordered to be reported to the House. Com. Book, 4 March.

§ Besides 6 horses, 2 swords, and 2 pikes.

|| Besides 6 horses, 1 musket, 3 pikes, 4 swords, and 1 pair of pistols.

¶ Including one Oldham, who sells arms. Com. Book, 4 March.

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	Return.	Dated.	Number of Papists.
60	Tower Division, St. John-at-Hackney - - -	March 5	3
61	„ Bethnal Green - - -	Feb. 6	15
62	„ Mile End - - -	March 5	3
63	„ Stratford, Bow, etc. - - -	Undated	None.
64	St. Leonard's, Bromley - - -	„	3
65	Stepney, Poplar and Blackwall - - -	„	6
66	„ Limehouse - - -	March 5	None.
67	„ Ratliffe - - -	„ 4	8
68	St. Paul, Shadwell - - -	March 5	13
69	Stepney, Wapping - - -	„	7
70	Whitechapel, Wapping - - -	„	3
71	East Smithfield - - -	March 4	8
72	St. Katherine's - - -	Undated	5
73	Tower Royalty, Trinity Minories - - -	March 4	3
74	Tower Liberty - - -	Undated	1
75	Old Artillery Ground, Tower - - -	March 5	None.
76	Marylebone - - -	March 6	2
77	Paddington - - -	„	1
78	Hampstead - - -	„	10
79	Kentish Town and Highgate - - -	March 4	3
80	St. Sepulchre's - - -	„ 5	9
81	St. Giles', Cripplegate - - -	„ 6	8
82	St. James', Clerkenwell - - -	March 5	12
83	St. Mary, Islington - - -	„	2
84	St. Botolph's, Aldersgate (Glasshouse Yard) - - -	Undated	None

[Delivered to the Committee as follows:—Nos. 1-15 on 2 March; Nos. 16-54 on 4 March; Nos. 55-75 on 5 March; and Nos. 76-84 on 6 March. Com. Book of dates.]

(g.) 28 Feb. Information of Mary Crooke against James Le Port, a Papist. L. J., XIV., 134. [Le Port was returned as a Papist by the Constable of Bowling Alley, Westminster (see Annex (e)), on 27 Feb., who informed the Committee, on hearsay, that

Le Port had told his neighbours he would not go out of town. The Committee ordered the Constable to speak to Le Port, and give an account to them. On the 28th *Mary Crooke* gave the above information to the Committee, which was reported this day to the House. (Com. Book of dates, and MS. Min. 28 Feb.) *Le Port*, at the Bar, denied the information: he was told when going through the Hall that he should be committed, and he said he hoped the Lords would then take care of his wife and children. (MS. Min. 1 March, L. J., XIV., 135.)]

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7. Jan. 23. D. Norfolk *v.* Maxwell.—Petition of Henry, Duke of Norfolk. Sets forth that by an Act of Charles I., amongst other things it was enacted that divers statues, pictures, and drawings of Petitioner's ancestors, intended by the Act to have been named in a Schedule and enrolled in the Court of Chancery, should remain and be heir-looms annexed to the honour. Most of the said statues, &c. were preserved pursuant to the intent of the Act, and continued in the possession of Petitioner's predecessors until now of late that Colonel Maxwell, under pretence and in right of his wife Jane, Duchess of Norfolk, has exposed the same to sale by auction, intended to be opened on Thursday, the 24th of this inst. January, whereby Petitioner cannot have recourse to any Court of law or equity to stay the sale until his right and title to the same may be heard and determined, other than to their Lordships. Prays for an Order to stay the sale of the said pictures, &c. until Petitioner may exhibit his title thereto in some Court of law or equity. L. J., XIV., 105. [The parties complained of being sent for by the Committee for Petitions, to whom the matter was referred this day, *Mr. Mawson* said he was made executor in trust by the late Duke of Norfolk for the Duchess. He had not acted these two or three years. Colonel Maxwell going out of town about a fortnight since desired him to attend the selling of the pictures, &c. *Mr. Walton* said he had only a few paintings, and those were put into his hands by the Duchess and Col. Maxwell. He knew nothing of any statute made concerning them. If he had any Order from their Lordships, he should part with nothing. The Committee then ordered to report as in L. J., XIV., 106. (Pet. Book 23 Jan.) On report by E. Clarendon, after reading the clause in the Act, the House took the opinions of the Judges. The MS. Min. have the following: *Sir Robert Athyns* says it is all primed upon the enrolment of that schedule, and so is a new business. *Sir Edward Montague* is heard. *Sir Cresswell Levinz*: The Act says that all in the Schedule by the Act, but here no Acts appear and till a Schedule, nothing appears. *Sir J. Holt*: There are two questions. 1. Concerning the merits of the cause, it seems to him to be accumulative that those that then he was possessed of, and so limiting. *Mr. Whitelocke*: Thinks it is not the merits of the cause. The Duke only desires a remedy, there being none in Westminster Hall now to be had. *Sir Robert Athyns* differs from Mr. Whitelocke that if the Court of Chancery were open they would not relieve. *Sir C. Levinz*: Does not think all are entailed, but some, and which some, is not yet made appear, nor that these are any of them. *Mr. Bradbury*: If in Chancery, on disclosing this in Chancery. It depends, he thinks, solely on their Lordships' judgments, and as yet there is nothing certified, nor schedule made. It depends solely whether the schedule were made of all the goods of those kinds. *Sir Edward Nevill*: Here are the three persons mentioned as true owners of those goods. If this ("and") in the Act were ("or"), it were plain. Ordered, That the

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sale of the statues be stayed, whereas by the falling of the term his Grace the Duke of Norfolk cannot have redress. (MS. Min. 24 Jan., L. J., XIV., 106.)]

Annexed:—

(a.) 23 Jan. Order of the House on preceding petition. L. J., XIV., 105. *In extensc.*

(b.) Printed advertisement as follows: "These are to give notice that the famous collection of paintings, limnings and drawings formerly made by the Right Hon. Thomas, late Earl of Arundel, will be set to sale (by way of auction) at the house of Mr. Walton, in Holborn Row in Great Lincoln's Inn Fields, on Thursday, the 24th of this instant January, beginning to sell at 10 in the morning and 3 in the afternoon, and will be exposed to view two days before the sale."

8. Jan. 24. E. Peterborough. — Petition of Henry, Earl of Peterborough, a prisoner in the Tower. Petitioner had been a domestic servant to the King very nearly thirty years, and by his grace and favour obtained some public offices under him and his late Majesty, but finding a sensible decay of health, was advised to travel. In order thereunto, and that he might leave his affairs here subject to as little trouble as possible, he did (as advised) obtain His Majesty's general pardon, under the great Seal, of all treasons, offences, and misdemeanours whatsoever; and for his more safe passage, did likewise obtain his Royal licence, to go with his servants and necessities to any place as he should think most convenient, as by the same, ready to be shewn to their Lordships, may appear. Petitioner in his voyage, in order thereunto, upon Tuesday the 11th day of December last, was forcibly by the rude multitude stopped and made a prisoner at Ramsgate (and robbed and plundered of all his goods and necessities) and afterwards at Canterbury; and so continued till removed by the order annexed. In this extraordinary juncture of affairs, all judges have refused to act, or intermeddle with any order of their Lordships, by which means Petitioner, very much to the prejudice of his health, has continued a close prisoner in the Tower. Prays for his discharge, with restitution of his goods, &c. [Read this day, and ordered that the Earl have leave to be at liberty at his own house at Millbank, upon bail of other and in the value of 1,000*l.* to Mr. Halifax, as Speaker of the House. MS. Min. Comp. L. J. XIV. 107, 108.]

Annexed:—

(a.) 24 Dec. 1688.—Copy of Order referred to in preceding petition, vizt.:—At the House of Lords, Westminster, 24th December 1688. [Here follows a list of peers present, corresponding with those given in Somers' Tracts, X. pp. 1, 2, as present on the 22nd, except in omitting the Bishop of Bristol, and adding D. Northumberland, E. Lindsey, E. Aylesbury, E. Litchfield, Bishop of Chichester, L. Lovelace and L. Cornwallis.] The Lords Spiritual and Temporal, assembled in this extraordinary conjuncture, having by their Order of the 22nd inst., appointed me for them and in their names to sign and subscribe such orders as shall be from time to time by them made; Do order that the Right Hon. the Lord Lucas, Chief Governor of the Tower of London, receive into his custody the persons of the Right Hon. James, Earl of Salisbury, and Henry, Earl of Peterborough hereby committed for high treason, in being reconciled to the Church of Rome; and that the said Lord Lucas do, in order thereunto, send such person or persons as he shall think fit to

receive and bring them under a convenient guard to the Tower of London, there to be kept in safe custody, till they be discharged by due course of law. And for so doing this shall be his Warrant. Dated at the House of Lords in Westminster, the 24th of December 1688. Signed by their Lordships' order. Francis Gwyn. To the Right Hon. the Lord Lucas, Chief Governor of the Tower of London. Vera Copia.

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27 Oct. 1689
(b.) 26 Jan. 1689-90. Lists of Visitors to the Earls of Peterborough and Salisbury in the Tower between the above dates, brought in as follows:

(1) on 30 Oct. 1689.	(32) on 9 Dec. 1689.
(2) " 31 " "	(33) " 10 " "
(3) " 2 Nov. "	(34) " 11 " "
(4) " 6 " "	(35) " 12 " "
(5) " 6 " "	(36) " 13 " "
(6) " 6 " "	(37) " 14 " "
(7) " 7 " "	(38) " 16 " "
(8) " 8 " "	(39) " 17 " "
(9) " 9 " "	(40) " 18 " "
(10) " 11 " "	(41) " 19 " "
(11) " 12 " "	(42) " 20 " "
(12) " 13 " "	(43) " 21 " "
(13) " 14 " "	(44) " 23 " "
(14) " 15 " "	(45) " 30 " "
(15) " 16 " "	(46) " 31 " "
(16) " 18 " "	(47) " 3 Jan. 1689-90.
(17) " 19 " "	(48) " 7 " "
(18) " 20 " "	(49) " 8 " "
(19) " 21 " "	(50) " 9 " "
(20) " 22 " "	(51) " 10 " "
(21) " 23 " "	(52) " 11 " "
(22) " 23 " "	(53) " 13 " "
(23) " 26 " "	(54) " 16 " "
(24) " 27 " "	(55) " 16 " "
(25) " 28 " "	(56) " 17 " "
(26) " 29 " "	(57) " 18 " "
(27) " 3 Dec. "	(58) " 20 " "
(28) " 5 " "	(59) " 23 " *
(29) " ? " "	(60) " 23 " "
(30) " 7 " "	(61) " 24 " "
(31) " 7 " "	(62) " 27 " "

9. Jan. 25. Absent Lords. (Call of the House.)—Letters in answer to summons ordered to be sent by the Lord Speaker [Halifax] to the Lords absent from the House this day, requiring them to attend with all convenient speed. L. J., XIV., 108. [There was a Call of the House this day, pursuant to Order of the 22nd inst., *ib.* 102.] The Letters are as follows:—

(a.) 1 Feb. (L. Holles.)—He is at present under several infirmities, accompanied with old age, being above sixty years, that he cannot now attend the service of the House of Lords, but will be ready to do so directly his health permits. Wrote last week to Lord North to make his excuse for a few days absence, but the

* A similar List of persons visiting L. Jeffreys in the Tower was brought in this day by L. Lucas, the Governor, but nothing was ordered on it. MS. Min. 23 Jan.

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- letter was not delivered to him until the day after the House was called, so no excuse was then made on his behalf. Hopes that by his Lordship's intercession, it is not now too late. *Dated Aldenham, 28 Jan. 1688.* [L. Holles excused. MS. Min.]
- (b.) 6 Feb. (D. Newcastle.)—Assures his Lordship he is not able to travel. He is so very weak; he has no stomach; eats nothing but a little broth. Is exceedingly decayed within this month. *Dated Wellbeck, Jan. the last (88).* [Read this day; excused. L. J., XIV., 119.]
- (c.) 6 Feb. (L. Darcy and Conyers.)—Received his Lordship's letter by command of the House, preferring the public before any concern whatsoever, his inability to pay his duty at this time being a great addition to his sad affliction for the death of his son, which is no excuse. His weakness is so great upon him, it is impossible to take such a long journey without danger of his life, as all his neighbours can too well witness for him; which he doubts not his Lordship will believe from one of the members of the House, who esteems nothing so sacred as his duty to the House of Peers, and will not fail to endeavour himself for their service as becomes him, which he beseeches his Lordship to present with all humility and submission. *Dated Aston, Ja. 31 (88).* [Read this day; excused. L. J., XIV., 119.]

10. Jan. 29. James II. (Votes of Abdication etc.)—Commons' Resolution of the 28th inst., declaring that James II. has abdicated, and that the throne is vacant, with Lords' Amendment marked thereon. C. J., X. 14; L. J., XIV. 110. *In extenso.* [After reading the above, the House was put into a Committee to consider the state of the nation, E. Danby in the chair. The MS. Min. have as follows:—Statutes 12 and 13 Car. II. referred to. On 29 Dec. 1648 the House of Commons having passed a vote to proceed against the King capitally, this House absolutely rejected it. 22 Edw. III. it was resolved that as the King hath no peer in this kingdom, neither can he be judged by them. All judgments in law are the King's; can the King judge himself? 1 Hen. VI. it was resolved because the King could not dispose of the kingdom. King John and Hen. V. aimed at alienating the crown, but could not. 40 Edw. III. it is expressly resolved that the King cannot abdicate his kingdom. This King can no more reign over you. Proposes a Regency with a Royal power. Abdication and dereliction in law is the same thing. Regency is the best remedy, and comes nearest the law. *Moved*, that we may have a Regency. If the King should come with an army to invade England, the Regent must proclaim all traitors that adhere to him, in his name. *Moved*; to ask the Judges how the word "Regency" is consistent or fitted with our laws as to the administration of our laws and making judges. *Sir R. Athyns*: A very great question. He takes it to be guardian and protector. Being Regent he is a subject. If you allow the regal power it differs little from king. If he have regal power he is a king, and the difference is in word. *Question proposed*: Whether a Regency or not? *Question*: Whether to concur with the House of Commons in their vote? *Question put*: Whether a Regency, with *the administration of** regal power under the name and style of King James II., *during the life of the said King James*, be the best and

* The question as put was proposed by E. Nottingham (Dalrymple's Mem. i. 264), and the rough notes above no doubt relate to his speech. He was answered by Halifax and Danby. Parl. Reg. xxv. 339. The words in italics were not in the question as originally drafted. An expunged entry adds, "Question, Whether these words ("the administration of") shall be added to the Question. The Not-Contents carried it."

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safest way to preserve the Protestant Religion and the laws of this kingdom. E. Clarendon and E. Devon appointed tellers. Contents 48,* Not Contents 51: Resolved in the negative. House resumed. (MS. Min. 29 Jan.; and L. J., XIV. 110.) On 30th the Committee of the whole House considered the above vote by paragraphs, E. Danby in the chair. Par. I., viz. down to ("between the King and people") being read, it was desired that the learned counsel of the law might give an account of what the original contract is, and whether there be any such or not. *Sir R. Athyns*: I believe none of us have it in our books or cases; not anything that touches on it. Thinks it must refer to the first original of government. Thinks the King never took any government, but there was an agreement between King and people. It is a limited monarchy and a body politic, and the King head of it. If there were an original contract, yet it is subject to variations as the times. Mr. Hooker says all public government is by agreement. James I. himself admits in 1609 that there is a paction between prince and people. "Every just King," he says, "in a settled kingdom is bound to obey the paction made to his people by his laws."† Reads preamble to the Act concerning Peter's Pence, &c., giving rules by which the prince shall govern and the people obey. This shows what the contract is, the laws of the kingdom. All public regiment seems to have arisen by contract between men and prince. Grotius de Bello, fol. 51. David who was made King by God, called all Israel together at Hebron, and made a covenant with them.‡ *Sir Edward Montagu*: Conceives the decision of this belongs to lawyers of a higher nature than he is of; the laws *Coronæ et Parliamenti*. As to the Common Law he speaks; as for book cases he finds none; all the discourse he finds is this, that all government is made up of a compact between King and people. In two senses, as a lawyer and in reason, he thinks the government is made up of a contract *ut ante*. *Dolben, J.* did not think any answer would be asked further than as from common lawyers. Has not met with the word in law books, but my Lord Coke does often speak of what amounts to it. If not, how say we, the king can do this and not? how came it to pass the king cannot make a law? In reason he thinks some such thing there was originally. *Levinz, J.*: Finds no such word in the books. Thinks that this contract is government according to the king on the one side and the people on the other. You may call it an original contract, though you know not when it began, because there are oaths on both sides, king and people, one to govern, the other to obey. *Sir Edward Nevill*: Takes it that all contracts in the world must have that original, for all did submit to one ever since government, and that implies original. In conquests the Government puts laws on them, yet in a little time that becomes an original contract. It must of necessity be implied by the nature of Government. *Holt, C.J.*: Question whether this Government is by contract or not. He conceives it was. If a monarchy be *jure divino*, then all other monarchs are unlawful. Fortescue defines it: he says this Government is not political but legal (*sic*).§ He always takes it to be so. If *jure divino*, it lies on the other side. *Mr. Whitelocke*: Thinks nothing of this is printed in book cases. But there is no book case to the contrary. How came this monarchy limited? If he had the

* E. Clarendon in his Diary, like the Parl. Hist. (p. 59), makes the minority 49, and gives the names. Evelyn in his Diary makes the numbers 51 and 54.

† Speech to both Houses at Whitehall, 21 March 1609, printed in his Collected Works, ed. 1616, p. 531.

‡ Atkyns quotes this precedent, as well as James' Speech in 1609, in his Tract on the Dispensing Power (Parliamentary Tracts), p. 192.

§ Evidently a misrendering of Fortescue's words, "A King of England cannot at his pleasure make any alterations in the laws of the land, for the nature of his government is not only *regal* but political." De Laudibus Leg. c. 9.

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monarchy he would not throw it off; he came by compact with the people, or else he had never come here. Alfred is in his oath obliged to suffer what is to be done for the people. *Mr. Bradbury*: At Oxford he was taught there was no contract, as in the Canons; he has since recovered from that opinion, and he thinks there can never be any government but by agreement between prince and people. What is the original agreement? In England there are steps as King, Lords, and Commons. The body of the Common Law must be taken to be that original contract. If the King has contracted by Act, it cannot be undone but by Act. *Mr. Petyt*: The original of government came from Germany. When they came they settled a heptarchy, and that settled in one. Spelman. Kings should be elected *per sacerdotium et populum*. There you have laws made by what we call a Parliament, as well the laity as the clergy. All the Kings acted and transacted by what we call a Parliament. In Selden's Titles of Honour you had the oath before any did homage. The King took the oath to maintain the Church, to do right between man and man and do justice. The disputes about the crown were treated there thus till William I. Edward Confessor was chosen in a Parliament. D. Normandy comes to be crowned at London; the Archbishop of Canterbury demands of the English, will you be pleased to have this King? They said "Yes," with one voice, as inspired. Rufus, Henry I., Stephen, Henry II., Henry III., all these claim no right but by Parliament. Two Acts to be read. There was always an agreement in the Saxons' times, and so it continues. 25 Edw. III., that settles [?] the right of the crown. He is bound by his oath to make remedy and law to his people in removing mischiefs. The King answers etc. Our Lord the King etc.* Cites speech of James I. to his first Parliament,† and the Act 1 Jac. I. c. 2. authorising Commissioners to treat with Commissioners of Scotland etc., which takes note of his speech. After debate, paragraph 1 was carried without amendment by 54 to 43.‡ E. Devon and E. Clarendon tellers.—Then paragraphs 2 and 3 were agreed to without debate. Upon debate of paragraph 4, a copy of the message to the King by the Prince of Orange was read (see Annex (b) below). *Question*: Whether in this paragraph, instead of the word ("abdicated") shall be inserted the word ("deserted"). Resolved in the affirmative. *Question*: Whether this paragraph thus amended shall pass. Resolved in the affirmative. The Committee then ordered to report as in L. J., XIV., 111.—On the 31st the House being again in Committee, E. Danby in the Chair, to consider the last paragraph ("and that the throne is thereby vacant") took the opinions of the Judges. *Sir Edw. Montagu*: This point and this consequence belongs to the Law of Parliaments and not to Common Law, and as to the Law of Parliament he dares not speak. *Sir Rob. Atkyns*: I conceive it is not a question for us to answer. It is a matter of law, but not Common law. There is *lex et consuetudo Parliamenti* which gives you instances where the judges utterly refused to answer. In the case of Baron Thorpe, a member of the Commons, who was taken in execution in vacancy of Parliament, the Commons demanded their Speaker might be set at liberty, and the Lords questioned what privileges they had. The Judges' opinion was demanded, and they denied.§ In 32 Hen. VI., when, the Parliament sitting, the Duke of York made

* These appear to be fragmentary references to the proceedings at the Coronation. See Sandford's Coronation of James II., pp. 88-9, and Taylor's *Glory of Regality*, App. p. 411.

† The speech is omitted in the Lords' Journal (see L. J. II. 264 note), but is printed by Kennett (Hist. II. 668) from the King's Works.

‡ Hallam makes these numbers 55 and 46 (Const. Hist. III. 130); Macnulay 53 and 46 (Hist. III. 382, edit. 1863).

§ See Rot. Parl. V. 239.

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claim to the Crown, the Judges' opinion was asked, whether the Duke had a title or not, and the Judges in this case made their excuse, and it was allowed.* *Levinz, J.*: It is a question of State rather than law; of as high a nature as can be. In high points of law of great weight the subjects come to the highest counsel and not to common lawyers. What should we have to guide us? No; it is the office of the High Court. A case cited since he sat here of dispositions of the Crown. *Sir Ed. Nevill*: For the reasons these gentlemen have given he thinks it a matter of State and not in them. *Holt, C.J.*: It is the main question which your Lordships are to determine. He thinks it unusual to propose such questions to them. *Sir Rob. Atkyns*' precedent he had looked on, and it is so. *W. Whitelocke*: He cannot differ from his brethren. It is a vote of the House of Commons, and if he had been of the House he would have given the same. *Mr. Bradbury*: He thinks there is a possibility. If the Royal Family were extinct it were vacant without all dispute, but the posture of affairs is now only fit for Parliaments. *Mr. Petyt* desires to be excused. Then after debate on the words ("and that the Throne is thereby vacant,")† *Question* put, Whether the words ("therefore the Prince and Princess of Orange be declared King and Queen") be inserted instead? *Previous Question* put, Whether this question shall be now put. Contents 47; Not Contents 52. Tellers, E. Devon and E. Clarendon. Resolved in the negative. *Question* put, Whether to agree with the House of Commons in the words ("And that the Throne is thereby vacant"). Tellers, E. Clarendon and E. Devon. Contents, 41; Not Contents, 55. Resolved in the negative. House resumed. E. Danby reported as in L. J., XIV. 112.—On 4 Feb., on debate of report of the Conference,‡ the Assistants were asked their opinions of the word "abdicated" in law. *Sir Robert Atkyns*: Does not take the word to be no term in their law, but he has consulted the dictionary, and that all know. *Dolben, J.*: The same. In Roman history it is often (*sic*).—*Levinz, J.*: Never met with the word in their law. *Sir E. Nevill* of the same opinion. *Mr. Whitelocke*: It is not a term in their law. Thinks it extends no further than to the person himself. *Mr. Bradbury*: Thinks it signifies somewhat more than "desert," and that it can go no further than to himself. *Mr. Petyt*: Of the same opinion with the rest. After further debate, *Question* put: Whether to agree with the House of Commons in the word ("abdicated") instead of the word ("deserted"). Contents, 51; Not Contents, 55. Tellers, E. Devon and L. Thanet. Resolved in the negative. After further debate, *Question*, Whether to agree with the House of Commons in these words ("And that the Throne is thereby vacant"). Contents, 53; Not Contents, 54. Tellers, E. Shrewsbury and E. Nottingham. Resolved in the negative. (MS. Min. 4 Feb.)—On 6 Feb. the House being resumed, after the Free Conference, the E. Nottingham reported they had met the Commons, and the difference was about ("abdicated") and ("deserted"), that "abdication" was not a legal word. It was the modesty of the law

* See Rot. Parl. v. 376.

† Here follows an expunged entry, with "Previous Question" marked against it, as follows: "Whether to agree with the House of Commons in letting these words "now stand in the vote of the House of Commons, as they are."

‡ The list of Managers of this Conference, as at first proposed, and noted down in the MS. Min. of 4 Feb., includes D. Ormond, the Earls of Huntingdon, Carnarvon, Anglesey, Berkeley and Hatton, Viscounts Fauconberg, Weymouth and Hatton, and the Bishops of London, Norwich, St. Asaph and St. David's, and does not include Archbp. York or the Bishops of Winchester and Peterborough. Comp. L. J., XIV., 115.

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that would not be expressed but in such a word. Law books cited. Cowell. We were told that acting contrary to a trust was a renunciation of that trust. The word "deserting" was no more known in law than "abdication." To the next point, the vacancy of the Throne, they said we had implied as much in the paper sent down. If it implied no more than leaving the exercise of the Government, then he might return to the exercise of it again. They insist upon ("abdicated"). They acknowledge it is a hereditary kingdom. It is necessary to fill the throne, the arguments by word of mouth running otherwise than in their paper. As to the word ("abdicated"); they gave us no answer. *E. Clarendon* said one gentleman said he did not mean it elective perpetually; he said it should be declared how the Crown should go. *E. Nottingham*: When we desired what method it should be upon our successors that they should not elect, we had no reply. They disclaimed the pretence of an elective Kingdom.—Report being ended, after debate, *Question* as in L. J., XIV., 118-119. Contents, 65; Not-Contents, 45.* Tellers, E. Oxford and E. Aylesbury. Resolved in the affirmative.]

(a.) 29 Jan. Commons' Resolution against Government by a Popish Prince. C. J., X. 15. L. J., XIV. 110. *In extenso*.

(b.) 30 Jan. Prince of Orange's message to the King by M. Halifax, E. Shrewsbury, and L. Delamere, advising him to remove to Ham. *Dated*, Windsor, 17 Dec. 1688. [Read in Committee of the whole House this day. MS. Min. No entry in L. J. It is printed *in extenso* in Kennett, III. 536.]

(c.) 1 Feb. Lords' Amendments to the Commons' Resolution of the 28th Jan. L. J., XIV. 113.

(d.) 11 Feb. Printed paper intituled "The Names of the Lords Spiritual and Temporal, who Deserted (not Protested) against the Vote in the House of Peers, the Sixth Instant, against the Word 'Abdicated' and the Throne 'Vacant,' in the same Method as they entered their names in the Journal Book." Here follow the names of the peers protesting as in L. J., XIV. 119, with the exception of the Bishop of Ely, whose name is here omitted. Underneath the list is printed the last portion of the Declaration of Rights (*beginning* "Having therefore an entire Confidence," and *ending* "James the Second be abrogated"), corresponding, with some variations, to the text as given in C. J., X., and intituled "A form of settling the Crown and Succession agreed on in the House of Commons, and by them communicated to the House of Lords for their concurrence." London. Printed for J. Newton, 1688-9. L. J., XIV. 123. [The MS. Min. state that Mrs. Newton lived in Bartholomew Close, and add a memorandum, afterwards erased, that the Warden of the Stationers' Company was to be sent for to attend the House to-morrow. See also 24 (b).]

11. Feb. 2. James II. — Letter of the King, "For the Lords Spiritual and Temporal assembled or hereafter to be assembled at Westminster"; as follows:—"JAMES R. My Lords. Wee think ourselves bound in conscience to doe all wee can to open our peoples' eyes

* Corrected from 44, as originally written. E. Clarendon, in his Diary, makes the numbers 62 and 47. On the previous day, just before adjourning, it was "Moved that when the House is to be told, the Lords shall go on each side the House to be exactly counted, and not go below the Bar." (MS. Min. 5 Feb.)

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that they may see the true interest of the nation in this important conjuncture, and therefore doe think fitt to Let you know, that finding wee could no longer stay with safety nor act with freedom in what concerned our people, and that it was absolutely necessary for us to retire, wee left the reasons of our withdrawing under our own hand, to be communicated to you and our other subjects in the following terms*:—The world cannot wonder at my withdrawing myself now this second tyme. I might have expected somewhat better usage after what I writ to the Prince of Orange by my Lord Feversham and the instructions I gave him. But instead of an answer what was I not to expect after the usage I received by the making the said Earl a Prisonner against the Practice and law of nations? The sending his own guards at eleven at night to take possession of the Posts at Whitehall without advertizing me in the least manner of it. The sending to me at one a'clock after Midnight, when I was in bed, a kind of an order by three Lords to be gone out of myne own Palace before twelve that same morning. After all this how could I hope to be safe, so long as I was in the power of one, who had not only done this to me, and invaded my kingdomes without any just occasion given him for it, but that did by his first declaration lay the greatest aspersion upon me that malice could invent in that Clause of it which concerns my son. I appeal to all that know me, nay even to himself, that in their consciences neither he nor they can beleieve me in the least capable of so unnatural a villany, nor of so little common sense to be imposed on in a thing of such a nature as that. What had I then to expect from one who by all artz hath taken such pains to make me appear as black as hell to my own people as well as to all the world besydes. What effect that hath had at home all mankind have seen by so general a defection in my army, as well as in the nation amongst all sorts of people.

I was born free and desire to continue so, and though I have ventured my lyfe very frankly on severall occasions, for the good and honour of my country, and am as free to doe it again (and w^{ch} I hope I shall yet doe as old as I am) to redeeme it from the slavery it is lyke to fall under. Yet I think it not convenient to expose myself to be secured so as not to be at liberty to effect it, And for that reason doe withdraw, but so as to be within call whensoever the nation's eyes shall be opened, so as to see how they have been abused and imposed upon by the specious pretences of religion and propertie. I hope it will please God to touche their hearts out of His infinit mercy, And to make them sensible of the ill condition they are in, and bring them to such a temper that a Legall parliament may be called and that amongst other things which may be necessary to be done they will agree to Liberty of Conscience for all Protestant dissenters, And that those of my own perswasion may be so far considered and have such a share of it, as they may Live peaceably and quietly as Englishmen and Christians ought to do, And not to be oblidged to transplante themselves, which would be very grievous especially to such as Love their Own Country; And I appeal to all who ar Considering men and have had experience, whither anything Can make this Nation so great and flourishing as Liberty of Conscience. Some of our neighbours dread it.

I could add much mor to confirme all I have said, but now is not the proper time.

Rochester December 22, 1688.

But finding that not taken to be ours by some, and that the Prince of Orange and his adherants did maliciously suppress the same, wee

* From here to the words ("proper time") is printed in Ralph, I. 1076.

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thought fitt some tyme thereafter to renew it, and lykeways to writt to such of your number as were of Our Privy Councill in the termes following,*

My Lords, when wee saw that it was no longer safe for us to remain within our kingdome of England, and that therupon wee had taken our Resolutions to withdraw for some time, wee left to be communicated to you and to all Ovr subjects the reasons of our withdrawing, and were lykewise resolved at the same tyme to leave such Orders behind us to you of Our Privy Councill as might best suite with the present state of affairs. But that being altogether unsafe for us at that tyme, wee now think fitt to let you know that though it has been our constant care since our first accession to the Crown to govern our people with that justice and moderation as to give if possible no occasion of complaint, yet more particularly upon the late invasion seing how the dessein was layd, and fearing that our people who could not be destroyed but by themselves, might by litle imaginary grievances be cheated into a certain ruine: To prevent so great mischief and to take away not only all just causes, but even pretences of discontent, wee freely and of our own accord redressed all those things that were sett forth as the causes of that invasion, and that wee might be informed by the counsell and advice of our subjects themselves which way wee might give them a further and full satisfaction, wee resolved to meet them in a free parliament and in order to it wee first laid the foundation of such a free parliament in restoring the citty of London and the rest of the Corporations to their ancient Charters and Priviledges, and afterwards actually appointed the writts to be issued out for the Parliament's meeting on the 15th of January. But the Prince of Orange seing all the ends of his declaration answered, the people beginning to be undeceived, and returning a pace to their ancient duty and allegiance, and well forseeing that if the Parliament should meet at the time appointed, such a settlement in all probability would be made both in Church and State as would totally defeat his ambitious and unjust designs, resolved by all means possible to prevent the meeting of the Parliament; and to doe this the most effectuall way, he thought fitt to lay a restraint on our Royall person, for as it were absurd to call that a free Parliament wher ther is any force on either of the houses, so much lesse can that Parliament be said to act freely, wher the sovereign by whose authority they meet and sit and from whose Royall assent all their acts receive their life and sanction is under actuall confinement. The hurrying of us under a Guard from Our Citty of London, whose returning Loyalty he could no longer trust, and the other indignities wee suffered in the person of the Earl of Feversham when sent to him by us, and in that Barbarous confinement of Our own person, wee shall not here repeat, because they are wee doubt not by this time very well known, and may, wee hope, if enough considered and reflected upon, together with his other violations and breaches of the laws and liberties of England, which by this invasion he pretended to restore, be sufficient to open the eyes of all our subjects and let them plainly see what every one of them may expect and what treatement they shall find from him, if at any time it may serve to his purpose from whose hands a Sovereigne Prince, an Uncle, and a father could meet with no better entertainment. However the sense of these indignities and the just apprehension of further attempts against Our person by them who

* The remainder, as well as a portion of what precedes, is printed in Clarke's *Life of James II.*, Vol. II., pp. 286-291, but with several variations from the above.

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already endeavoured to murder Our reputation by infamous Calumnies (as if wee had been capable of supposing A Prince of Wales) which was incomparably more injurious then the destroying of Our Person itself, together with a serious reflection on a saying of Our Royall Father of blessed memory when he was in the lyke circumstances, that ther is litle distance between the Prisons and the Graves of Princes (which afterwards proved too true in his Case) could not but perswade us to make use of that right which the Law of nature gives to the meanest of Our subjects of freeing Ourselves by all means possible from that unjust Confinement and restraint; And this wee did not more for the security of our own person then that thereby wee might be in a better Capacity of transacting and providing for everything that may contribute to the peace and settlement of Our kingdomes; for as on the one hand no change of fortune shall ever make Us forget Ourselves so far as to condescend to anything unbecoming that high and royall station in which God Almighty by right of succession has placed us, so on the other hand, neither the Provocation or Ingratitude of Our own subjects, nor any other consideration whatsoever shall ever prevail with us to make the least step contrary to the true interest of the English Nation which wee ever did and ever must looke upon as Our own. Our will and pleasure therfor is that you of Our Privy Councell take the most effectual care to make these our gracious intentions known to the Lords Spiritual and Temporal in and about Our Citties of London and Westminster To the Lord Mayor and Commons of Our City of London, and to all Our subjects in generall, And to assure them that wee desire nothing more then to return and hold a free Parliament wherein wee may have the best opportunity of undeceiving our People and shewing the sincerity of those protestations wee have often made of preserving the libertys and properties of Our subjects and the Protestant Religion, More especially the Church of England as by Law establisht, with such indulgence for those that dissent from her as wee have always thought Ourselves in justice and Care of the generall wellfare of Our people bound to procure for them. And in the mean time You of Our Privy Councell (who can judge better by being upon the place) are to send us your advice what is fitt to be done by us towards our returning and the accomplishing these good ends. And wee doe require you in Our Name and by Our Authority to endeavour so to suppress all tumults and disorders that the Nation in generall and every one of Our subjects in particular may receive the least prejudice from the present distractions that is possible. So not doubting of your dutyfull obedience to these Our Royal Commands, wee bid you heartily farewell. Given at St. Germain en Laye the 4-14 of January 1688-9, and of our reigne the fourth year.

All which wee sent with a servant of Our Own to be delivered as it was directed, but as yet wee have no account of it. Wee lykeways directed Copies wrott to severals of you the Peers of Our Realme, beleiving that none durst take upon them to intercept or open your Letters, but of these Lykewise wee have no account.

But we cannot wonder though all arts be used to hinder you from knowing Our sentiments, since the Prince of Orange rather chose against all law to imprison the Earl of Feversham, and to drive us away from Our Palace then to receive our invitation of coming to us, or hearing what wee had to propose to him, well knowing that what wee had to offer would Content all reasonable men, and was what he durst not trust you with the knowledge of. We think fitt now to lett you know that whatever Crimes shall be Committed or whose posterity soever shall come to suffer for these crimes, wee are resolved to be innocent.

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And therfor doe declare to you that wee are ready to return (when safely wee may) and to redresse all the disorders in our Kingdoms in a free Parliament called according to Law and held without Constraint, More particularly wee are contented to secure the Church of England as by Law establisht, and by the advice of that Parliament give such indulgence to dissenters as Our People may have no reason to be jealous of. We will lykeways by the advice of that Parliament heal all the divisions, Cover with oblivion all the faults, and restore the happyness of Our People, which never can be effectually done by any other Power, which wee expect you will seriously & speedily consider. Given at St.

Germain en Laye the $\frac{26 \text{ January}}{5 \text{ February}}$ 168⁸ - and of our Reigne the Fourth.⁹

By his Majestie's Command. MELFORT." L. J., XIV. 114.

Annexed:—

(a.) 2 Feb. Letter of Lord Preston,* enclosing the above, to the Marquess of Halifax, as follows: "My Lord, I have received the inclosed Letter, with the King's Command to deliver it to the Lords Spiritual and Temporal now assembled at Westminster. I think it to bee most proper to communicate it by your Lordship's hand to their Lordships; which is the occasion of giving to you this trouble by, my Lord, your Lordship's most humble servant, PRESTON." L. J., XIV. 114. [Lord Preston, on appearing to explain the circumstances to the House, was desired to come in at the Bar. (MS. Min. of date.)]

(b.) Cover of preceding letter. Addressed "For the Right Honourable the Lord Marquisse of Halifax, Speaker of the House of Lords *pro Tempore*. To bee communicated to the Lords Spiritual and Temporal." L. J., XIV. 114.

12. Feb. 6. R. Jennison. — Petition of Robert Jennison, Gent., praying for discharge from custody. L. J., XIV. 119. Almost *in extenso*.

13. Feb. 9. E. Essex's death.—Order of the Lords of the Close Committee appointed to examine into the death of the late Earl of Essex, requiring John Browne, Esq. to bring before them all such Examinations and Informations concerning the Earl's death, as had been taken either before the Lords Committees before appointed to examine into the death of the said Earl, or had been brought to, and were still before the House of Lords. *Signed* Bedford, Devonshire, Mordaunt, Delamer. *Underwritten*, under date 15 February, is a receipt for (1) a Book of Committees and three papers, one dated 4 Feb. 1688, from Mr. John Walker, Deputy to John Browne, Esq., Clerk of the Parliaments, and (2) Informations touching the death of the Earl of Essex and a printed Trial, dated 23 Jan. 1688, from Mr. Braddon. *Signed* Laurence Braddon.† [A Committee of Enquiry was appointed on 23 Jan. (L. J., XIV. 105), after the following proceedings in the House, of which mention appears only in the MS. Min. of date. —L. Lucas gave the House an account of some persons who came to

* See E. Clarendon's Diary, 2 Feb. 1688-9.

† See *passim* in reference to this subject, Braddon's "Murder will out" and "Innocency and Truth Vindicated," in Somer's Tracts, X., 65-174. It appears there that the informations mentioned by Lord Lucas, then Governor of the Tower, had been taken on the 22nd before one of the Middlesex justices, and that the two persons he was desired to seize were Major Hawley and Thos. Russell, the Warder (*ib.* p. 77).

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acquaint him of some persons that desired him to seize two persons in the Tower, and delivered certain informations of Samuel Brampston, Sarah Bampton, Rich. Grimes, Wm. Fisher, Samuel Bampton and Sarah his wife, Philip Johnson, Miriam Tovy, Wm. Edwards, Thos. Edwards of Lyle St., Jane Loudman, Susannah Gibbon, and John Floyd. These Informations were read. The House being informed that *Mr. Laurence Braddon* was at the door, he was called in, and at the Bar was asked if he had anything new concerning the death of the Earl of Essex. Being sworn, he said that on the Monday after the Earl's death, being at Sir Josiah Child's, he pulled out the Information of the Coroner of a razor. Then said, The E. Essex murdered. As soon as he came to town he went to Sir H. Capel and told him this. Sir H. Capel sent his footman to come to him and Mr. Maio, Scotland Yard. He asked Edwards what his son said concerning the razor. He went and discoursed the boy in the afternoon. The boy denied; the boy said the King would hang him. He discoursed the boy. Asked him if he read the 5th Acts; if it be true "Own it." His sister, he said, threatened him he should be hanged. Witness went to Sir G. Treby, but did not find him. He went to Sir Rob. Clayton, who refused to discourse alone. He went to Sir J. Lawrence. He went to the Secretary; he met with Mr. Mountstevens; he came again at 4 o'clock. He delivered the Informations to Lord Sunderland. He brought the boy and sister. Mr. Atterbury took him into custody, and then called in. King asked what he had to do in this business. The boy was examined: he did not hear it. The Lord Keeper told him he endeavoured to suborn the boy. He heard the Earl's death was reported at Frome the same day it was done. The Lord Keeper demanded 24,000*l.* bail for him and his He offered 1,000*l.* bail; he petitioned to be removed, but was refused. He removed himself by *Habeas Corpus*. It was at Shrewsbury, Andover, &c. before his death. The sentinel that day says he let in two to my Lord's Chamber: he did not see them go out. *Lord Lucas* said they were kept apart. Mr. Braddon then withdrew. *L. Lucas* gave the House an account of Major Hawley (MS. Min. 23 Jan.). In Committee, the same day, *Laurence Braddon*, being examined, said that John Holland, formerly page or footman to Lord Sunderland, was one of those suspected to have been among the ruffians who murdered the Earl. Desires he may be apprehended. Mundy was the warder that opened the door; he is now in waiting at Somerset House. Capt. Crow, of Greenwich, went from the late King to secure the persons near the Earl of Essex. Edw. Farnham was the coroner. Witness desires the last three may be summoned. John Lloyd, a prisoner in Newgate, has been examined, but not upon oath. Feilder of Andover, a grocer, and his wife, can testify that the Earl's death was spoken of there the Wednesday before his murder. Jeremy Burges, of Marlborough in Wilts can testify that at Frome, 100 miles off, the Earl's death was spoken of the morning he was murdered. Phillips, that belongs to the East India Company, was often sent to the Earl of Sunderland for money for John Holland. Asks that Davis may be summoned. One Fletcher, that rode in Lord Arran's regiment, told witness that he was Holland's comrade there, and that he always spent two or three guineas a week. Asks that Capt. Richardson may be summoned. He told witness that the Earl of Sunderland got Holland his reprieve and afterwards his pardon, and was much concerned for him. Lewis of Marlborough told witness that the same day the Earl of Essex died, about 2 o'clock, he heard between Marlborough and Frome that the Earl was dead. Mrs. Meaux, late of St. John's, heard in Berk-

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shire of the Earl's death the day before he died. Jane Loadman, near Long Acre, and Mrs. Gibbins of St. Katherine's, to be examined concerning the throwing out the razor and hearing of groans or shrieks in the Earl's chamber. Thos. Cox, of Birmingham, heard the report of the Earl's death the day before his death, and so did an innkeeper at Shaftesbury, whose name witness remembers not. Suggests that Cadman in the King's Bench should be examined concerning a note left with him, directed to the Countess of Essex, but carried by him to Justice Hinton, who says he sent it to the Earl of Sunderland; and also Webster, a prisoner in Newgate. Desires he may be permitted to see the room the Earl of Essex was murdered in. The Committee then ordered as in L. J., XIV. 106. (Com. Book 23 Jan).—On the 25th *Braddon*, being again examined by the Committee, gave an account that Capt. Richardson said he had Holland in his custody, and the Lord Sunderland made great interest to get him off, though he be a great villain. Gives an account of his viewing the room in the Tower, and that he lay down in the closet and that he could not be seen, though Bominy swore he saw through the door the Earl of Essex, when fallen down. No part of the ground could be seen. *Capt. Richardson*, called in, said that Holland was committed to him for burglary; that there was a reprieve and an order for transporting; then he was put into a pardon. Lord Sunderland's footmen used to come often to him, but none else, and never Mr. Mountstevens. One of my Lord's Under-Secretaries wrote to him that Holland should not be transported, for my Lord would get him into a pardon. This letter, he believes, was written by my Lord's order, and he looked on it as sufficient warrant for him. Witness is then desired to endeavour to take Holland, which he promises to do, and also to enquire who used to come to Holland. *Braddon* said further that Mrs. Hodgison, an ironmonger's wife of Wapping, told him she would swear an herbwoman coming out of the Tower told her immediately after the Earl's death she saw the razor thrown out at the window. Witness is directed to bring her to the Bar to be sworn. *John Lloyd*, called in, said he was sentinel at the Tower from before 8 till near 11 on the morning the Earl died. He died between 9 and 10. Knew nothing of the Earl's death. Had orders to let none in without Hawley's or the Warder's order. Two men, well clothed, without swords, went in quickly after witness was set. The Warder quickly opened the door after they knocked, and let them in, shut the door, and he heard some go upstairs presently after the two men came in. After this the Earl looked out at the window, and asked him "what o'clock?" Witness told him "after 8." After that he asked again; witness said "near 9." Then he asked if the King was come. Told him he believed he was; quickly after which the King came under the gate. My Lord came to the window again and thrust out his arm and self to look for the King. Quickly after he heard a thump in the room, and afterwards a cry in the room "My Lord is dead! My Lord is dead! My Lord is dead!" Heard a noise like a trampling before the thump. This noise was about an hour after the men went in. Knows not when the two men came out. Remembers the Lords going in and out. My Lord Russell he thinks went out about 10 o'clock, to be tried. The two men went in before my Lord Russell went to his trial. My lord looked out at window an hour and a half after witness heard a going upstairs. *Major Webster*, called in, and asked whether he took off my Lord's cravat, whether he stripped my Lord, and by whose order, said that Major Hawley and Lord Arlington ordered him to search his pockets for papers, but he found none. He took off the cravat: it was not at all cut. He was taken out of the closet before witness came. There was much company.

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The cravat lay in the wound. He is bailey in the Tower ; he was sent to the Coroner immediately to come down. There were twenty in the room when he was called in. Major Hawley called to him out of the window. He searched my Lord's pockets before he took off the cravat. My Lord's handkerchief was upon the table, which witness took up, to wipe his fingers which were bloody by taking off the cravat, and put it unknowingly in his pocket. The body was in the room, lying on his back, with his head towards the closet door when witness came in. There was no woman in the room while he was there. He found no gold in my Lord's pocket, only a watch and two or three shillings. The cravat was tied round, was just in the wound, and not cut as he knows of. He knows not who removed the body out of the closet. He was in the Mint when Major Hawley told the King of the Earl's death. *Mr. Braddon* is desired to put his Information in writing, which he promiseth. *Mr. Farnham*, the Coroner, called in, said the Earl of Essex was stripped before the jury sat on him. When witness first saw him the body lay half out of the closet and half in. Webster came for him ; he lived then in Baldwin's garden. He never ordered the stripping any body before. Major Hawley, after witness was gone out of the house, called to him out of the window to know if my Lord might be stripped. Witness told him he might if he would ? He summoned the jury to attend next day. The jury asked for the clothes. Witness answered, "There is the body ; are you not satisfied ? He denied not their seeing the clothes. The wound was from jugula to jugula. While the jury was viewing the body, Lord Arlington's secretary called witness two or three times to the door for the Inquisition to carry to the King. The razor lay upon a shelf in the closet when witness came in.—*Elizabeth Rogerson*, called in, said that, being newly come home, a market woman that she sometimes employed told her my Lord Essex had just cut his own throat ; that it was true, for she saw my Lord throw the bloody razor out of the window. She knows not where the woman lives, but sees her often.—*Mrs. Meaux*, called in and asked what she knew of the Earl's death, said, asking her daughter (whom she met at the stage coach to go out of town) "what news at your end of town" (the Tower) ; she said there was a Lord in the Tower had cut his own throat. Witness asked her who ; she said she knew not. This was the day before Lord Russell's trial. Afterwards in Berkshire she heard my Lord died on Friday, which made her recall that her daughter told her of it.—*William Cadman*, called in, said, when he woke in his shop, where he was asleep, he found a note directed "To the Countess of Essex with speed." He advised with Mr. Croke what to do with it. He wished him to go with it to a justice, whereupon witness went to Justice Hinton with it, who told him he would call on him, and he and witness would go to Sir Lionel Jenkins, the Secretary, but never called. Witness was subpoenaed by Mr. Braddon, but not used at his trial. Justice Hinton had the note. Witness never heard of Bonimy's name till within a fortnight since, nor ever saw any of his writings. *Thos. Osborne* and Mr. Justice Hinton were then ordered to be examined at next meeting. *Nathaniel Mundy*, called in, said he never saw two men go to my Lord Essex the morning he died. Mr. Bominy, my Lord's servant, came running down, said my Lord was not well, and afterwards he went up and said my Lord was not in the room, Witness ran up, and saw the blood run a yard from my Lord. The razor lay about eight or nine inches from my Lord's hand upon the ground. My Lord's head lay from the door. Bominy was the first that went into my Lord's chamber, Russell the second, and witness the third. My Lord's periwig hung upon a tack. Witness give Major Hawley

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notice, and followed him back. When he returned, there were several in the room. Re-called, he stated that when Russell could not open the door, he bent it and looked in. The blood was in the closet. Hawley came back twenty paces before witness. (Com. Book, 25 Jan.)—On 4 Feb. *Sam Story*,* called in, said that Mr. Braddon desired him to assist in taking some persons, that Webster said he took the razor and threw it out at the window. Lloyd was a sentinel that stood. Lloyd said he did not let in anybody. Witness spoke with Lloyd in the Minories on the 21st January, when Webster was brought in a prisoner. Lloyd said he let in Webster and one or two more. He did let in Webster before the Earl of Essex was killed. What occasion was, he seized, by a justice's warrant. He went at the request of Braddon. Then Mr. Braddon said he had a warrant for some persons he suspected. Webster said he himself threw the razor. Lloyd said it fell just by him, and a maid and a boy strove which should take it up. Witness asked Webster why he threw it out. He answered he could not tell. *Braddon* said the razor was thrown out about two minutes before the Earl of Essex was known to be dead. Webster owned to him that he threw the razor. *Osborne* said he lived at Tower-hill; he knew Webster. He came home with a handkerchief, bloody, and said it was the Earl of Essex's, and showed a purse of gold and said it was guineas. Webster had wronged him. He said they were French pistoles, and gave an account how he knew pistoles. Did not ask him where he had this gold. He showed the handkerchief to a hundred. *Mr. Braddon* said he could prove by many witnesses that he showed the gold. One *Beaufoy*, an attorney, owned he saw the purse of gold. *Will. Treherne*, called in, said that as to the report at Frome, two days before it was reported that the Earl's throat was cut; one *Hill* told witness so. *Braddon* came down and put *Hill* into Salisbury prison. When *Hill* came home, said there was such a one taken up for [it]. *Mr. Braddon* was instrumental in taking *Hill*. It was generally reported in Frome before the Earl's throat was cut. What was the reason *Hill* gave you? *Hill* said it was reported the Earl of Essex cut his throat because he would not be at the Lord Russell's trial. *Braddon* said there were two more in the town who could tell this was reported in Frome two days before the Earl was killed.—*Mem.* Sir Christopher Musgrave to be desired to attend the Committee. *Mundy*, called in, and told a sentinel charged him with letting in men before the Earl of Essex's death. Witness said he let none in. He was smoking a pipe of tobacco by the pales, and his man *Bominy* came and cried out "Oh Lord! O Lord!" One *Thos. Russell* said he believed my Lord had made away with himself. He put in his head, and saw blood. With pressing the door with his shoulder he saw blood. Who was in the house then? One *Thos. Russell*, and *Alice*, a servant, and *William*, a footman to the Earl. *Bominy* took a note and he perused it. The note went up by *Bominy*, of the particulars of the provisions. Were you the first man that went up after the outcry? No; there was a servant. Did you not see Mr. *Hawley* there? To the best of his knowledge he cannot say he did see him. Did you sit at that place when the Lord Russell went by?—Yes; and no person came in or out. A great while before the Lord Russell went by, he washed his hands and face. He went for *Capt. Hawley*. Asked if he did not fetch *Hawley* from the Mint? He said, No, he went to him on the platform. *Mr. Hawley's* house, he says, is two rooms of a

* The E. Devon, on 2 Feb., moved in the House for him to be sworn to give evidence before the Committee. MS. Min.

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floor. Mr. Hawley, he says, might be gone out, before he might go to my Lord's room without his seeing him. Asked if there was not a great many people in the room when Hawley came. Asked how long my Lord Russell went by before this accident? He says he believes about three-quarters of an hour. He saw and is sure no person or persons went in to him but those persons, his two servants. How could you see my Lord Essex sitting on the same side? The window juttet out, and so he saw him. The sentry stood at the door. Begs he may be bailed. The Committee then ordered Thomas, William, Sarah, and Anne Edwards, Samuel Bampton, Sarah Bampton, James Davidson, Nathaniel Mundy, John Lloyd, Major Webster, and Samuel Story to attend on Wednesday next the 6th Feb. to which day they adjourned. Nothing further in Com. Book. But on the 5th of February the close Committee, whose order is given above, and who appear to have superseded the larger and original Committee, was appointed, L. J., XIV. 118. The MS. Min. of 5 Feb. supplement the Journal entry as follows: E. Devon moved that several persons might be sworn in order to be examined at the Earl of Essex's Committee. Then the following were sworn, viz., Thos. Edwards, Wm. Edwards, Sarah Edwards, Anne Edwards, Samuel Bampton, Sarah Bampton, and James Davidson. E. Devon acquainted the House that one Mundy, now in custody, may be bailed. *Ordered.* E. Devon moves that the Committee have authority to name a few or small number of them to take informations in the Earl of Essex's case. Lords appointed to be a close Committee to examine the murder of the Earl of Essex. Number to be three (seven was originally written). Here follows a list, out of which the following names are retained, viz.: Devon, Delamer, Mordaunt, Bedford, and the remainder are erased, viz.: Stamford, Clarendon, Chesterfield, Cornwallis, Macclesfield. (MS. Min. 5 Feb.) No record is found of the proceedings of this Close Committee; but the MS. Min. give the names of various witnesses sworn in the House to give evidence before them, viz.:-

Bascomb,	} 6 Feb.	*Peter Hubland,	} 2 March.
Nuthall,		Mary Hubland,	
*Salisbury.		Susanna Gibbons,	
Arthur Perkins,	} 11 Feb.	*Jane Loadman,	} 4 March.
Samuel Pecke,		Mrs. Ann Meux,	
*Peter Essington,		James Buller,	
*William Turner. (The		Wm. Fisher,	} 11 March.
Earl's servant, MS.		Wm. Price,	
Min. 23 May.)		Robert Bostock,	
Richard Rowdon,	} 22 Feb.	*Christopher Tempest,	} 15 April.
Wm. Justice,		*Rich. Jordan,	
Mary Rowdon,		Thos. Savage,	} 16 May.
*Dorothy Smith,		Jas. Whitechurch,	
*Thos. Shillingford,	} 26 Feb.	Thos. Feilder,	} 16 May.
Sir Christ. Musgrave,		Jeremiah Burges,	
M.P. (L. J., XIV.		Thos. Havard, Esq.,	
132; O. J., X. 35.)		John de Burdenie, Clerk,	
		John Bancroft, Surgeon.	

The depositions of the witnesses examined were reported on 22nd May (L. J., XIV. 215) and read on the 23rd, when they were ordered to be sealed up and kept by the Clerk of the Parliaments pending the return of the Lord Steward, E. Monmouth† and L. Delamer (*ib.* 216).

† V. Mordaunt had been created E. Monmouth on 9 April 1689.

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The MS. Min. of 23 May give a list of the depositions of those of the abovenamed persons whose names are marked with an asterisk, together with the depositions of Sir Thos. Row, Knt., Edward Farnham, John Holland, Thos. Howard, and Rich. Davis, and a French letter concerning Bominy, an account of which was given to the House by E. Bedford, who said that Bominy had been sent for, but never came. The Committee was revived on 2 November (L. J., XIV. 331), and on the 28th the House ordered the above depositions to be delivered to them (*ib.* 356), and the witnesses, who had been bound over, to appear on the first day of Hilary Term (*ib.* 355). But no record is found of the proceedings of this revived Committee, and the prorogation on 25 Jan. 1689-90 put a final stop to the inquiry.]

Annexed :—

- (a.) 21 Feb. Petition of Thos. Hawley, Esq. Petitioner has stood committed close prisoner by their Lordships' order in the Tower for above a month past, upon suspicion of some matters relating to the death of the Earl of Essex, whereof he knows himself to be innocent and wholly ignorant, nor has ever heard of any evidence that is against him. Prays to be either bailed or discharged. L. J., XIV. 130.
- (b.) 26 Feb. Holland's letter to the Earl of Feversham. Presumes to acquaint his Lordship that one Mr. Braddon and some others have the impudence to asperse the King, his Lordship, and Lord Sunderland, as being concerned in the death of the late Earl of Essex, and this Braddon openly declares he has nineteen men to swear it. At the first sitting of the Convention he had a warrant from the House of Lords to take the writer, alleging he had evidence to prove him one of the persons that committed the fact, and that the King, his Lordship, and Lord Sunderland had hired him to do it, and these villains are now every day in pursuit of him, and are resolved to take away his life by subornation and perjury, and no justice to be expected from them. Appeals to Heaven and to his Lordship, hoping God will protect his Lordship from the malicious designs of those wicked and bloody villains. Humbly begs his Lordship to write a word or two to Lord Sunderland, or who else his Lordship shall think fit, for he doubts not but his Majesty, if sensible of this barbarous usage, would take compassion on him. Will go beyond sea on the first opportunity. Dated 23 Feb., J. Holland. *Endorsed* as read this day. See L. J., XIV. 132.
- (c.) 24 April 1689. Petition of Thomas Russell, one of His Majesty's yeomen warders of the Tower. Petitioner is committed to the Tower on pretence of being concerned in the death of the late Earl of Essex, of which he is altogether ignorant, and has been confined above thirteen weeks. Being innocent, and having a family to maintain, which will be ruined and undone by his longer confinement, he prays to be bailed or discharged. L. J., XIV. 191.

14. Feb. 12. Declaration of Rights.—Declaration of both Houses concerning the oppressive and illegal measures of the late King, and for the Prince and Princess of Orange to be King and Queen.* The

* Before adjourning on 13 Feb. to Whitehall, the House ordered that John Walker, Deputy to John Browne, Cler. Parliamentor, should read the Declaration before the Prince and Princess of Orange. MS. Min. 13 Feb.

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original text is the Declaration as first agreed to by the Commons on the 8th, and is set out in C. J., X. 23-24. It bears marked upon it the amendments, made by the Lords partly on the 9th, (which are given *in extenso* in C. J., X. 25, and in MS. Min. of date,) and partly on the 12th (MS. Min.). The negotiations as to these amendments are fully set out in C. J., X. 25-27. [Brought up from the Commons on the 8th, at a Conference, as "alterations and amendments" to the Oaths of Supremacy and Allegiance and the Vote of the Lords concerning the Prince and Princess of Orange to be declared King and Queen (C. J., X. 23-24; L. J., XIV. 121), and agreed to this day after amendment. (L. J., XIV. 125 *in extenso*.) The MS. Min. of the 9th supply some information, not found in L. J. XIV. 122, respecting the Lords' proceedings in amending the Declaration in the House. On consideration of the second paragraph, it was moved to add at the end thereof the words "as by consequence would" "subject all the laws to his will and pleasure," and the Assistants were asked what laws the King may dispense with. *Sir Edw. Montagu*: That he finds it in (*illegible*). *Sir Rob. Atkyns*: He hath no power. *Dolben, J.*: Cannot say the King hath no power, because he finds the judges have always been of that opinion, and have met several times in consideration of it, as in the Vintners' case. He conceives the King may dispense with several Acts for these 200 years; he believes the Pope brought in the power. *Levinz, J.*: Whether any at all or what, he takes the question to be. Without a doubt the King has dispensed with a thousand laws. Believes it grew from the Pope and from those that sat in Council in those days. Takes it that in some cases the King can dispense with laws, but those in the King's Declaration he cannot. Cites case of 2 Hen. VII. [6 b.] upon the Statute of Sheriffs and 25 Car. II. The amendment was then agreed to.* In paragraph 6, the amendment respecting the illegal quartering of soldiers (L. J., XIV. 122), was carried by 44 to 33, Tellers E. Nottingham and E. Devon. In the similar paragraph in the Declaratory part, the words "in time of peace" were at first agreed to be left out. The Assistants were heard also on the paragraph declaring the Prince and Princess of Orange King and Queen.]

Annexed:—

(a.) 8 Feb. Oaths of Obedience agreed on by both Houses this day (L. J., XIV. 121), and embodied in the Declaration of Rights. C. J., X. 21, *in extenso*. The two orders made by the Lords, which are defective in C. J., X. 21, are correctly given immediately before the Oaths in C. J., X. 24. *See also* MS. Min., 7 Feb. [On 7 Feb. the Lords appointed a sub-committee to draw up an Oath of Fidelity, consisting of E. Notts, L. Delamer, L. Wharton, E. Rochester, and Bp. Peterborough, and the above two Oaths were drawn up by them and reported by E. Notts this day to the C.W.H.† MS. Min.]

(b.) 11. Feb. Lords' amendments to the Declaration. [Made on the 9th, and communicated to the Commons this day, C. J., X. 25, *in extenso*, and MS. Min. of 9th.]

* It was disagreed to by the Commons (C. J., X. 25), and waived by the Lords on the 12th (MS. Min.).

† The House, on this report, ordered the Bishops to bring in to the House the form of an oath of obedience they are to take when made bishops. MS. Min., 7 Feb.

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- (c.) 11. Feb. Lords' reasons prepared this day. C. J., X. 25, *in extenso*. [The Com. Book of date gives the following reasons as originally drafted, which do not appear in this paper, viz. The reason for the amendment in p. 1, ll. 7, 8 is, "This amendment makes the paragraph more expressive and full"; and for that in p. 3, l. 21, "Because the dispensing power in some cases has been exercised by many preceding Kings without complaint."]
- (d.) 12 Feb. Commons' Amendments to Lords' Amendments. C. J., X. 26. *In extenso*. Begins "As to the leaving out;" ends "arbitrary and illegal courses."
- (e.) 12 Feb. Commons' reasons for disagreeing with some of the Lords' Amendments. Begins "As to the matter;" ends "James the Second to the throne." C. J., X. 26. *In extenso*.
- (f.) 12 Feb. Commons' Amendments to Lords' Amendments on page 1, line 26, and page 3, line 19, and draft order, proposed by the Commons for the declaration to be entered in the Journal of the House of Peers and recorded in Chancery, C. J., X. 26.
- (g.) 12 Feb. Draft Order of both Houses for enrollment of the Declaration. L. J., XIV. 126. *In extenso*.
- (h.) 15 Feb. King's answer to the Declaration. L. J., XIV. 127. *In extenso*.
15. Feb. 12. Prince of Orange.—Proclamation for the Prince and Princess of Orange to be King and Queen. L. J., XIV. 126. *In extenso*. [Drawn up by the Lords, and sent to the Commons this day. L. J., XIV. 126, and MS. Min. The Amendment made by the Commons (*ib.*) was merely the addition of the following words in italics, "and whereas the Lords and Commons *now assembled at Westminster* have made a *declaration* and presented the same" etc. MS. Min. of date.]

16. Feb. 18. King's speech.—King's speech to both Houses this day. L. J., XIV. 128. *In extenso*. [The D. Somerset bore the sword and the M. Winchester the cap. MS. Min. of date.]

17. Feb. 18. Parliament Act.—Amended draft of an Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament. After a preamble as in the Act, the Bill enacts "That the Lords Spiritual and Temporal and Commons now sitting in Westminster, are the two Houses of Parliament, and so shall be, and are hereby declared, enacted, and adjudged to be, to all intents, constructions, and purposes whatsoever, and so to have been from the 13th day of February in the first year of their Majesties' reign, notwithstanding any want of writ or writs of summons, or any other defect of form or default whatsoever, as if this Parliament had been summoned according to the usual form." [Read 1^a, 2^a, committed, and reported with amendments this day. L. J., XIV. 128, 129. Royal Assent 23 Feb., L. J., XIV. 132. 1 Will. & Mary c. 1.]

Annexed:—

- (a.) 18 Feb. Clause as follows; "And be it further enacted by the authority aforesaid that the Act passed in the 30th year of King Charles the Second, entituled An Act for the more effectual preserving the King's person and government by disabling Papists from sitting in either House of Parliament, as to so much thereof only as concerneth the taking of the oaths of Supremacy and Allegiance therein mentioned, shall be and

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is hereby repealed to all intents and purposes, anything in the said recited Act to the contrary notwithstanding. And be it further enacted that the making, subscribing, and repeating the declaration in the said recited Act likewise mentioned, and the taking of the oaths mentioned in the said declaration made the 12th day of February 1688, entituled the declaration of the Lords Spiritual and Temporal and Commons assembled at Westminster by every peer of this realm or member of the House of peers and by every member of the House of Commons from and after the * day of , shall be taken, made, subscribed, and repeated in such manner and at such time as the said oaths of Allegiance and Supremacy, and the said declaration in the said recited Act mentioned are required, and shall be as effectual to all intents and purposes as if the same had been taken in manner and form as by the said recited Act they are required, anything in the said recited Act to the contrary notwithstanding." [Added by the Lords in C. W. H. this day (MS. Min.). and amended by the Commons as in the Act.]

- (b.) Rough draft of preceding clause. [In Sir Rob. Atkyns' handwriting.]
- (c.) 22 Feb. Commons' Amendments. [Made this day (C. J., X. 33), and agreed to by the Lords on the 23rd (L. J., XIV. 131) after having been considered in C. W. H. on the 22nd. (*ib.* 131, and MS. Min. of date.)]
- (d.) 22 Feb. Proviso to the Bill. [Added by the Commons this day (C. J., X. 33), and agreed to by the Lords. (MS. Min. of date.) It forms the last section of the Act.]

18. Feb. 26. Trial of Peers Bill.—Amended† draft of an Act for the better [regulating of the trial of the Peers of England] *regulation of trials.*‡ "For the more equal and indifferent trial of all the Peers of this Realm in times to come, Be it enacted by the [King's] *King and Queen's* most Excellent [Majesty] *Majesties*, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, That [§when any person that now is, or hereafter shall be a

* The MS. Min. of 19 Feb., when the bill was read 3a, state "Agreed to fill the blank with three and twentieth day of February." But see C. J. X. 33.

† In this draft and in the amended re-draft (Annex a), the additions are shown by italics, and the omissions by square brackets.

‡ The title as amended by the Select Committee was "An Act for the better regulating of the trials of Peers and Commoners" (Com. Book, 2 March). It was recommended as above, on consideration of their report, by a Committee of the whole House. (MS. Min., 4 March.)

§ The remainder of this clause, after being first amended by the Select Committee by reading ("*the whole House of Peers of this realm*") instead of ("the number of one and fifty of such Peers of this realm at the least"), was struck out altogether, and superseded by the first clause of Levinz's re-draft (Annex a), as then amended. (Com. Book, 2 March.) It was reinstated, however, and amended by the Committee of the whole House, who rejected, by 32 to 30, the clause substituted for it by the Select Committee. Tellers: E. Macclesfield and E. Stamford. On report from C. W. H. the same day, the Select Committee's clause was read, and on question that it should stand, the previous question: Whether this question shall be now put? was negatived by 23 to 22. Tellers (for Contents), E. Pembroke; (for Not-Contents), L. Cornwallis. (MS. Min., 4 March.) On the next day, however, the House resolved by 31 to 28 (Tellers, E. Bath and E. Bridgewater) to disagree with the amendment of the C. W. H., and finally restored the Select Committee's clause (MS. Min., 5 March) in lieu of that in the text above.

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peer of this realm, shall for any crime for which he ought to be tried by his peers, be brought to his trial (a Parliament not actually sitting) the number of one and fifty of such peers of this realm at the least, who have sat in the last Sessions of the last Parliament immediately before the trial, shall be summoned to appear for that purpose, and that five and thirty of them at the least shall appear at such trial, and by those that do appear, together with such other peers as shall be then present at such trial, being such as sat in the last Sessions of the last Parliament as aforesaid, or the major part of them, every peer so to be tried shall be acquitted or condemned]. Provided always that during the being of a Parliament every peer or *peeress* that shall be brought to his or her trial for any crime, shall be tried by the whole House of Peers according to former usage and not otherwise; any law, custom or thing to the contrary in any wise notwithstanding.* [Read 1^a this day. L. J. XIV., 132. In Select Committee Mr. Petyt was examined, and stated that the Act 15 Edw. III. ordained that Peers should be tried in Parliament, but that Statute was repealed 17 Edw. III. 1 Hen. IV. was the first trial of Peers out of Parliament. All the peers were summoned to the E. Huntingdon's and E. Holland's trial. The Committee then, after a proposal that all the Peers should be summoned, instead of only 51, agreed on certain heads (to be drafted into clauses by Mr. Serjeant Levinz), as follows:—That instead of the present enacting clause, a clause be drawn that 61 at least be summoned, that 44 appear, and that there be a liberty of challenging peremptorily 20, and that 24 at the least remain to the trial of the peer.—That no man shall serve upon grand juries in all criminal cases or petty juries in treason, that has not at least 20*l.* per annum, in petty juries in civil cases or felonies 10*l.*—That it be lawful to except against either Lord or Commoner, that shall be upon any grand jury or jury in any criminal case, that shall not take the test, which shall be tendered by the Court if the party require it.—That the party accused, whether Lord or Commoner, may have a copy of his indictment a week before his arraignment, and of the panel two days before his trial.—That Counsel be allowed to the party accused in case of treason.—On 2 March, accordingly, Sir Creswell Levinz offered a new draft of the bill, containing the additional clauses required. (*See Annex (a).*) The Marquess of Winchester proposed some things to be added, which were to be offered in the House, and which E. Pembroke had (*Com. Book* 28 Feb., 2 March). On the Bill being reported from Select Committee, the House went into Committee upon it and again on report from C. W. H. (*M.S. Min.* 4 March). The Bill was passed on the 6th in the shape it assumed in *Annex (a)*, and was sent to the Commons, where it dropped.]

Annexed:—

(a.) 2 March.—Amended re-draft of the Bill by Sir Creswell Levinz,† viz.—[An Act for the better regulating of the trial of the peers of this kingdom. For the more equal and indifferent trial of the peers of this Kingdom in time to come, Be it enacted etc. that] for the trial of every person that now is or hereafter shall be a peer or *peeress* of this realm, for any crime or crimes for which he or she ought by the law of the land

* Here are marked for insertion the remainder of Levinz's clauses, omitting the Proviso, and with the addition of a clause added on report from Select Committee (*see Annex a*).

† The Amendments, where not otherwise specified, were made in Select Committee.

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to be tried by his *or her* peers (a Parliament not then actually sitting), there shall be summoned to be at and sit upon the said trial sixty-one peers at the least such as sate in the then last preceding sessions of Parliament or were *or ought to have been* summoned to sit in the then last Parliament whereof forty-four* at the least appearing, the peer *or peeress* to be tried shall have liberty to challenge twenty of them peremptorily, And by the rest of them that shall remain after such challenge, not being under the number of twenty-[five] *four* the said peer *or peeress* shall be tried and by the voices of the major part of them shall be acquitted or convicted and not otherwise.† [Provided always that every peer that is to be brought to his trial for any the offence or offences aforesaid during the being of a Parliament, shall be tried by the House of Peers according to former usage and not otherwise.‡] *And be it further enacted that in all cases of treason other than concerning the King's coin there shall be two witnesses of express overt acts of treason.*‡ And be it further enacted by the authority aforesaid that no person shall be returned to serve upon the grand jury in any criminal case, nor upon the petit jury in case of high treason, unless the person so to serve have lands and tenements of some estate of freehold of the clear yearly value of twenty pounds at the least, nor to serve upon the petit jury in case of felonies or in civil actions where the debt or damage amounts to twenty pounds unless he have lands and tenements of some estate of freehold of the clear yearly value of ten pounds at the least, and that for want of such sufficiency of freehold such jurors may be challenged, and shall be set aside, except in case of trials in cities and towns corporate, where four hundred pounds clear personal estate shall satisfy in place of twenty pounds per annum, and two hundred pounds clear personal estate in place of ten pounds per annum. And be it further enacted that if *any peer summoned to be a Tryer* or any person returned to serve upon the Grand jury or petit jury in any criminal case shall refuse to make the Declaration mentioned in the statute of [25] 30 Car. II. [cap. 2.], *entituled An Act for the more effectual preserving the King's person and Government by disabling Papists from sitting in either house of Parliament*, being thereto required by the Court where such *Peer is to attend* or jury man is to serve, which such Court is hereby required to tender to such *grand jurymen ex officio and to such peer or peers or jurymen* upon request of the defendant or defendants in such criminal cases, such *peer*, grand jury man or jury man shall be discharged and not suffered to serve in the said case. And be it further enacted that every peer *and peeress* and other person that hereafter shall be indicted of any capital offence for which he *or she* shall be tried by his *or her* peers or in the Court of King's Bench, shall have a copy of the indictment *translated into English*, whereupon he *or she* is to

* 'The amendment first proposed was "forty-five."

† See footnote to first paper with regard to this clause.

‡ Written over this proviso, which is struck out, is the following clause, added in Select Committee, and then struck out, in favour of the Proviso in the original Bill (see first paper):—"And be it further enacted by the authority aforesaid that no peer or peeress of England during any prorogation, adjournment, or other continuance and being of Parliament shall be brought to his or her trial, for any capital crime whatsoever, save only before the whole House of Peers assembled in Parliament."

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be arraigned by the space of a week before such arraignment and also of the panel by the space of two days before the trial, [if the persons to be arraigned and tried shall desire the same,] *and in other inferior Courts a copy of the indictment the night before the arraignment, and a copy of the panel two hours before the trial* And be it further enacted that Writs of Error in all cases of treason shall, upon petition of the heir or heirs of the person attainted to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, be granted of right and without delay.* And be it further enacted that in all cases of high treason the defendant and defendants shall be admitted to have counsel to advise them [and also to manage their evidence for their defence upon] *before and at their trials, in matter of fact as well as law, which counsel, if the party demands it, shall be assigned by the Court.* And be it further enacted by the authority aforesaid, that in all criminal cases, evidence shall be given upon oath for the defendant.† And be it further enacted that in all criminal cases hereafter no proceedings or prosecution shall be by way of information, but only by way of indictment, and for the encouragement of the prosecution the Court that gives judgment in the case shall allow the prosecutor such part and proportion of the fine or forfeiture as he should have had in case the prosecution had been by information. [The above is Sir Creswell Levinz's drafting of the Heads referred to him by the Select Committee, as amended by that Committee and by the House, and, together with the Title, first paragraph and Proviso of the original Bill, forms the Bill as passed and sent to the Commons. On 4 March, in C. W. H., a clause was proposed concerning juries returned, but was not agreed to. MS. Min.]

19. Feb. 28. Dissenters' (Toleration) Act.—Amended draft of an Act for exempting their Majesties' Protestant subjects dissenting from the Church of England, from the penalties of certain laws. [The Bill, being the original draft, was read 1^a this day (L. J., XIV., 134). On 14 March it was read 2^a and committed to the Committee on the Comprehension Bill‡ (*ib.* 148). It was considered in Committee, the Chairman being E. Nottingham, on March 27, 28, and April 3, 4, 5, 6, 8 (Com. Book of dates). The amendments,§ omitting those which are verbal or consequential, were as follows:—§ i. of Act (Folio Ed., p. 74) to read ("*scrupulous*") instead of ("*tender*"), and to add the words excepting the Acts of 25 and 30 Car. II., and requiring a register to be

* Here follows a clause, inserted also as an amendment in Select Committee, but cancelled in Committee of whole House (MS. Min., 4th March), viz., "And be it further enacted, that in all cases of high treason except treasons concerning the King's coin, and counterfeiting his Seals, a writ of attaint shall lie as in other cases; and for the better enabling the party to bring his writ of attaint be it enacted that the substance of the evidence whereupon the verdict was given shall be entered upon the record of the verdict."

† The following clause was added in Committee of the Whole House upon report from the Select Committee on 4 March (MS. Min.).

‡ The MS. Min. of 27 Feb. state "House moved for leave to bring in two Bills—*An Act to abrogate those things that keep good Protestants out of the Church; An Act of Comprehension.*" The words in italics are struck through, and under them is written "An Act for the Uniting of Protestants; An Act for the Ease of tender consciences." For the Comprehension Bill, see No. 32. Both were introduced by E. Nottingham.

§ The effect of these amendments in Committee is ascertained by a comparison of the lists given in Annex (b) and in the Com. Book with the text of the amended draft and the original Act.

kept of persons subscribing the Declaration.*—§ iv. to add ("or any other duties to the Church or Minister").—§ v. to substitute the proviso in the Act for the words ("Provided always the said Deputy be allowed and approved by two or more Justices of the Peace of the County in which such office is borne and executed").—§ vi. to read ("declare his approbation of the Articles") instead of ("subscribe his assent and consent unto and approbation of the Articles"), and to add the exemption from the penalty of 100*l.* under the Act of Uniformity.†—§ viii. instead of ("Minister") to read ("Teacher that is a Minister of a Congregation"); and to add, as concluding words, ("or other office in any hundred of any shire").—§ x. instead of ("abjure") to read ("renounce").—§ xi. to add the alternative of a certificate under the hands of four Protestants, etc., and to substitute ("six") for ("the Minister or Teacher and twelve"), and ("belongs") for ("pretends").—§ xii. to fill the blank left for the penal sum with ("fifty").—Then to omit a clause in the original draft as follows:—("And be it further enacted by the authority aforesaid That if any person shall subscribe the aforesaid Articles of Religion except before excepted, and shall take the oaths of Fidelity and make and subscribe the Declaration aforesaid, or shall make the said Declaration together with the Declaration of Fidelity aforesaid, every such person may keep any school for the teaching and instructing of youth, or be a tutor in any private house or family. But no person as aforesaid shall be capable of being master or usher of any Free School or School endowed").—Then, after agreeing without amendment, to § xiii. and § xiv.,‡ with which the original draft concludes, to add clauses embodying § xv.§ and § xvi.|| of the Act.—These amendments were ordered to be reported on 8 April (Com. Book), but were not actually reported till the 15th (L. J., XIV. 175). They were agreed to, on consideration of the report, on the 17th, when some further amendments were made (L. J., XIV. 178).¶ On the third reading on the 18th, a proviso was offered and read, to make the Bill temporary** (MS. Min.). The Commons, on 22 May, returned the Bill with amendments,†† which the

* The insertion of such words was ordered on 3 April (Com. Book.)

† This amendment was not among those made in Select Committee, but the insertion of such a clause was ordered on 3 April (Com. Book), and it was inserted probably on report. See also Annex (c).

‡ This clause was retained without amendment, after a division, by 11 to 3. (Com. Book, 6 April.)

§ This clause was added pursuant to an order "that there be a clause to prevent disturbances at meetings by rude persons." (Com. Book, 6 April.)

|| The Committee on 28 March ordered the Bishop of London to offer a clause obliging the Minister to give notice to a Justice of the Peace of the Dissenters meeting. The above clause was agreed to on 8 April. (Com. Book of dates.) It is written correctly, as in the Original Act, on the paper of amendments (Annex b), but incorrectly on the draft Bill.

¶ The only amendments marked on the draft, which were not made in Committee, are the exemption from the penalty of 100*l.* in § vi., and the amendment in § iv. The words ("disturb the same or") in the clause corresponding with § xv. of the Act are interlined on the Roll, and form the only amendment not in any way accounted for. The second marginal note of "Dissenters' Toleration Bill," in L. J., XIV. 178, is wrong, it should be "Bill for abrogating the Oaths" (No. 33).

** A similar proviso, to make the Act last for only seven years, was negatived afterwards in the Commons (C. J., 17 May).

†† These amendments are set out in C. J., X. 137, and are embodied in the Act as follows:—Nos. 1, 2, and 3, in § vi.; Nos. 4 and 5, in § viii.; No. 6, in § ix.; No. 7, in § x.; No. 8, in § xii.; Nos. 9, 10, 11, and 12, in § xv.; and Nos. 13, 14, and 15, in § xvi. The Folio Edition inserts No. 13 after ("Archdeaconry") instead of after ("held"), making better sense, but not corresponding with the entry in C. J., X. 137, or the original Roll itself.

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Lords agreed to, with amendments.* To these amendments, reported from a Conference, the Commons agreed (C. J., 22 May), and the Bill received the Royal Assent on 24 May. (L. J., XIV. 217).—1 W. & M. c. 18.]

Annexed:—

(a.) 4 April. Petition of divers of the people called Quakers, on behalf of themselves and the rest of their Society, to the Lords' Committees on the Bill. Petitioners having been long and grievous sufferers because for conscience sake they dare not take any oaths, though always willing to affirm the truth in all cases, when called thereto, and also to submit to such punishments as the law inflicts upon perjured persons, in case any among them shall affirm a false thing for truth, therefore pray their Lordships to take their suffering case into their Christian consideration, and find out a way for their relief; that in all cases where oaths are usually required, their solemn affirmations and denials may be taken and recorded, in which they hope always to be found faithful and conscientious, as becomes just men and true Christians. *Signed* Wm. Meade, Steven Crisp, Gilb. Latye, Wm. Ingram, Walter Benthall, John Edridge, John Vaughton, Geo. Whitehead, John Dew, W. Shardson, Thos. Barker, Rich. Whitpain. [Read in Committee this day, on consideration of § x. of the Act. On the 5th *Mr. Meade* is called in and says: We cannot procure two persons to swear for us, for we ourselves will not swear at all. Many of our friends have lost their debts because they would not bring others to swear. Com. Book, April 4 and 5.]

(b.) 15 April. Lords' Amendments in Committee. [Reported this day, L. J., XIV. 175.]

(c.) Words, giving exemption from penalty of 100*l.* in the Act of Uniformity [Added to § vi., probably on Report. *See above.*]

20. March 1. Papists (Removal from London) Act.—Amended draft of an Act for the amoveing Papists and reputed Papists from the [City] *Cities of London and Westminster and ten miles distance from the same.* [Read 1^a this day; Royal Assent 24 April, L. J., XIV. 135, 191, 1 W. & M. c. 9. The original Bill, consisting substantially of the first three sections of the Act, was referred to the Committee for sending Papists out of town (*see* No. 6.), of which L. Paget was chairman (L. J., XIV. 137). This Committee, besides making some verbal alterations in the title (as marked above), and in § ii. and § iii., amended the Bill by exempting "merchant foreigners" in § ii., and by adding two provisoes, drawn by their Assistant Sir W. Dolben by their direction, the first being *verbatim* § v. of the Act, and the second running thus: *Provided also that nothing in this Act contained be intended to abridge the Queen Dowager of any privilege for her family or servants contained in the Articles made and agreed to at her marriage* (Com. Book, 5, 6 March). These Amendments and Provisos were reported and agreed to on 6 March (L. J., XIV. 140). On 28 March the Bill was returned from the Commons agreed to with two formal amendments in § ii., and with the addition of two provisos, the first being to except such Papist tradesmen as had inhabited for two months, and the second being in substitution for the Lords' proviso

* These amendments are given in C. J., X. 143. The former of the two was proposed by E. Rochester. (MS. Min., 22 May.)

relating to the Queen Dowager (C. J., X. 66). The Lords agreed to the amendments in § ii., but disagreed to the Provisos (L. J., XIV. 164). After a Conference, the first proviso was agreed to, with the substitution by the Lords of six months for two (*ib.* C. J., X. 77) and became § iv. of the Act. With regard to the second proviso, the Lords on 15 April offered an alternative one (L. J., XIV. 175. *In extenso*) to which the Commons disagreed on the 17th (C. J., X. 91), but on the following day they agreed to amendments (C. J., X. 92. *In extenso*) proposed by the Lords to their proviso, which, thus amended, became § vi. of the Act.]

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21. March 2. Absent Lords.—Letters in answer to summons ordered to be sent by the Lord Speaker Halifax to the Lords absent from the House this day, requiring them to attend on the 18th inst. L. J., XIV. 137. [On 26 Feb. the House ordered that all Lords should take the Oaths this day. L. J. XIV. 133. *See* Nos. 2, 3, 4.] The letters are as follows :—

- (a.) 7 March. (L. Brooke).—He left not the House till by his attendance he has grown so very ill he could no longer stay in town. He is still in the doctor's hands, and not in a condition as yet to stir from his chamber. Fears he will not get strength to come by the 18th, but as soon as he can endure the journey, he will not fail to pay his attendance. *Dated* Knowle, 4 March. [Read this day. MS. Min. *See* also Annex (k.) below.]
- (b.) 7 March. (D. Newcastle).—He received his Lordship's letter of the 2nd inst., and humbly assures his Lordship he is much weaker now than when he wrote last, and his flesh much more wasted. Is not able to travel, and can hardly get out of his bed. Is in a great consumption, and wastes fast. According to his Lordship's order, he will send two servants to acquaint his Lordship how weak he is, and that he is not able to travel. *Holograph. Dated* Wellbeck, 4 March 1688. [Read this day. MS. Min. Witnesses were examined in support of his statement, and he was excused. L. J., XIV. 145. MS. Min. 9 March.]
- (c.) 13 March. (L. Conyers).—In obedience to the commands of the House, he has sent up two of his servants, being not in a condition to attend his duty, nor able to lie down or rise out of his bed without help, or walk over his chamber. His old father lies very weak, who, he fears, will be dead before this reaches his Lordship; and he is not able to pay his last duty to him, having great concerns; and his poor fatherless grandchildren will require him there, but he is not able to stir; if he were, he would prefer the public, especially at this time, before any private concern of his whatever, which he beseeches his Lordship to believe. *Holograph. Dated* Aston, March 8, 1688. [Read this day. L. J. XIV. 147.]
- (d.) 14 March. (L. Ferrers).—Begg his Lordship's kind endeavours that his present unhappiness of health (which is very extraordinary) may excuse him to the House, in case he is not able to wait upon their Lordships as early as their order requires. His hopes of being in a condition to travel within some reasonable time make him think it needless to send witnesses to swear to his present condition. No one can be readier than himself to obey the orders of the House. *Holograph. Dated* Staunton, March 8, 1688-9. [Read this day. MS. Min.]

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- (e.) 18 March. (Bishop of St. David's).—When he had leave of absence to attend some extraordinary business occasioned by the rabble having seized two waggons laden with his books, linen, and other goods, he doubted not to have been able to conclude the matter this week. But the rabble refusing to deliver what by the courtesy of some neighbours was saved or recovered, he wrote to London for a warrant from the L. Chief Justice; but, being advised of that office being vacant, the necessity and value of his concerns made him unable to attend, and he begs an order for the restoration of his goods. The rabble are still insolent, and insist on such conditions as he could not have imagined; and if he returns before the books are restored, they will think what is left a lawful prize. *Signed* Tho. St. David. *Dated* Burrough, March 14, 1688-9. [Read this day, but the Bishop not excused. L. J., XIV. 152.]
- (f.) 18 March. (Bishop of Coventry and Lichfield).—In obedience to their Lordships' order of the 2nd inst., he has sent two persons of his own attendance to make affidavit about his infirmities and pains, which for many months have kept him to his room, and make it impossible for him to attend. *Signed* Tho. Co. and Lich. *Dated* Coventry, March 14, 1688. [Read this day. L. J., XIV. 152.]
- (g.) 18 March. (E. Strafford).—Has sent two persons to testify his inability to attend by the 18th. But, being better, he has sent for a litter, and hopes soon to be able to attend. *Dated* W. Woodhouse, 13 March 1688. [Read this day. L. J., XIV. 152.]
- (h.) 18 March. (L. Stawell).—Was advised by his physicians to leave London about three years past; and since then has been continually afflicted with gouty ulcers and frequent convulsions, and has lately been threatened with apoplexy and gangrene, about which Sir Thos. Wetherley, Sir Chas. Scarborough, and others have been in consult. *Dated* Ham, 12 March 1688-9. [Read this day. L. J., XIV. 152.]
- (h¹.) 8 March. Certificates (2), signed by J. Fred. Sagittary, M.D., and John Fisher, Chirurgeon, that L. Stawell could not travel to London without danger.
- (i.) 18 March. Bishop of Hereford).*—Has received command from M. Halifax, Speaker, to attend personally, or send up two witnesses to attest his inability to come. This was in a manner something more strict than formerly, but in substance the same. It is impossible for him, at the age of 86, to make so long a journey, especially at this time of the year, and almost as impossible to find out witnesses to attest so much. Supposes the Lords will be satisfied if this is signified to them, which he begs his Lordship to do. *Signed* H. Hereford. *Dated* Hereford, 11 March 1688. [Read this day. L. J., XIV. 152.]
- (k.) 19 March. (L. Brooke).—Has been very ill since last writing to his Lordship, but hopes soon to attend, and will do so as soon as he can without hazard of his life. Assures his Lordship, upon his word, that this is no excuse, but the real truth of his condition, therefore he thought he need not send anybody to attest this. *Dated* Knowle, 16 March. [Read this day. (MS.

* This letter is addressed to the Bishop of London. L. J., XIV. 152 states wrongly that the Bishop of St. David's letter was the one written to one of the Lord Bishops.

Min.) On March 22 the House ordered him to attend on 3 April. (L. J., XIV. 158.)]

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(L.) 23 March. (Archbishop of Canterbury).—His present condition forbids his attendance. It is now full two years and a half since, upon his refusal to go over, and sit in the High Commission Court, the King thought fit to forbid his coming over at all. And from that time he has scarce ever stirred out of doors, but when he was forced out. And since this restraint was at an end (that is, for these last three months), he has never gone out of his house, not so much as into his garden. And though he cannot procure two persons—indeed, he cannot think fit to ask anyone—to come and make oath that he is under sickness absolutely disabling him (which is what his Lordship's letter of the 5th inst. requires, "All other excuses set apart," and that the true reason why he then made none), yet he can affirm thus much, that his great age and many infirmities, his long confinement at home, and the more than usual inconveniences which the late winter brought upon him, have not left him in a condition to pass the river without great danger and detriment to his health. Hopes this will satisfy the House, and serve to excuse his absence. *Holograph.* W. Cant., Lambeth House, 23 March 1688. [Read twice this day, and debate thereof adjourned to the 25th. (L. J., XIV. 159.) The MS. Min. add a note, struck through, "Let him know that his letter is not satisfactory."*]

22. March 5. Address of both Houses to the King that the Houses will assist him. L. J., XIV. 139. *In extenso.*

23. March 6. Forster v. Forster.—Petition of Henry Forster, Gent. Petitioner's father, Arthur, his second son Cuthbert, a lunatic, having married one Janet Latimer without his consent, entailed his estate in Cumberland and Northumberland, worth about 300*l.* a year, on his eldest son Nicholas and his heirs, with remainder to Petitioner and his heirs, appointing Sir Richard Graham and others as trustees. Nicholas, after his father's death, agreed with Sir Gideon Scott, on his cousin german, Christian Scott marrying Petitioner, to confirm his father's settlement, and settle his other property also on Petitioner and his heirs. The marriage took place, but the settlement was deferred, Sir Gideon and Petitioner depending meanwhile on Nicholas' promise, who died before the settlement could be made, but repeated his intentions on his deathbed. Petitioner brought a bill in Chancery against John Forster, son and heir of Cuthbert, and others, to have the settlement confirmed, and the marriage agreement executed; and on 25 Nov. 1674, Lord Keeper Nottingham and Mr. Justice Wyndham decreed accordingly, and ordered John Forster, when he came of age, to convey to Petitioner, who was admitted tenant of the copyhold premises by the now Lord Preston, and spent above 1,600*l.* in building on part thereof. Lord Jeffreys, on a re-hearing, declared that he would not believe the settlement, nor regard the marriage agreement, and dismissed Petitioner's Bill. John Forster has since obtained at Carlisle assizes a verdict in an ejectment for Arthur's copyhold lands, and for the lands purchased by Nicholas, and for the lands called Kirsopfoot, comprised in the settlement, on pretence that Sir George Graham, of whom they were purchased, was

* He had been ordered on the 22nd to attend this day. (L. J. XIV. 158.) A cancelled entry in MS. Min. of 22 March states, "Ordered that this House shall be called ten days hence, and that all peers that do not attend shall be fined 500*l.*"

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only tenant for life. Prays that the dismissal may be reversed, and E. Nottingham's decree confirmed, and Petitioner put into possession. *Signed* by Appellant; *Countersigned*, Ambrose Phillipps, L. J., XIV. 141. [The appeal was heard and dismissed on 19 April (*ib.* 181), *Sir William Whitelocke* and *Sir Ambrose Phillipps* being Counsel for Appellant, and *Sir Charles Porter* and *Mr. Hutchins* for Respondent. The Lord Privy Seal stated the case to the House. (MS. Min., 19 April).]

Annexed:—

(a.) 27 March. Answer of John Forster, Gent. The estate belonged to Respondent, as nephew and heir of Nicholas. Appellant took advantage of Respondent's minority and his mother's poverty to obtain possession. Appellant's proper remedy, if aggrieved, is at law. The first decree was not absolute, but only unless Respondent should, on attaining age, show cause to the contrary. *Signed* by Respondent; *Countersigned*, Geo. Hutchins.

24. March 7. L. Grey de Warke's Privilege (Downing).—Printed paper as follows:—An Account of the taking the Lord Gray in a ship bound for France, but was entered for Newcastle, in order to the making of his escape. It is the very same gentleman that was with the Duke of Monmouth in the West of England. This day information was made by the Ship's Crew riding in the *Hope*, that the Lord Gray that was formerly concerned with the Duke of Monmouth, was on board their ship bound for France, but the ship was entered for Newcastle. The Captain of the *Greenwich* frigate, immediately upon information, went aboard and seized the said Lord Gray, and carried him aboard his Majesties ship the *Greenwich*, and brought him to Gravesend, and last night he was expected to be brought to the Tower, but came not; but 'tis credibly reported he will be brought thither this evening tide.—Captain Hall, a man very well known, gives this account, and asserts it for truth.—London. Printed by W. Downing. 1689. L. J., XIV. 142, 144. [For Downing's examination at the Bar, *see* MS. Min. 8 March.]

Annexed:—

(a.) 22 March. Petition of Wm. Downing, Junr. Petitioner, an apprentice bound to his own father, having been lately concerned in the printing two scandalous and false libels, is sensible of his error, and desirous of making acknowledgment of the same. Prays their Lordships to remit his fine, and grant him his liberty. [Read this day. Nothing done on it. MS. Min. of date.]

(b.) 5 July. Petition of same, now prisoner in the Gatehouse. Lord Grey has pardoned the libel against him, and the other libel, the List of protesting Lords, was printed when there was no licenser to the press then constituted. The paper was taken out of a newsletter in a Coffee-house in Little Britain, written by one Dyer. Offended only in obedience to his father. Has been imprisoned for three months and is in ill health. Prays their Lordships to pity his condition, and release him. L. J., XIV. 269. *See also* 10. (d.)

25. March 7. L. Russell's Attainder Reversal Act.—Amended draft of an Act for annulling and making void the attainder of William Russell Esq., commonly called Lord Russell. Noted in margin, "I do allow of the bringing in of this Bill WILLIAM R." [Read 1^a this

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day; Royal Assent 16 March. L. J., XIV. 142, 151. 1 W. & M. c. 4. in Long Calendar. The Lords' Amendment is purely verbal, *i.e.*, adding the Christian name "Rachell" to Lady Russell. For the Commons' Amendments, which were agreed to, *see* C. J., X. 50. In Lords' Committee on the 9th *Mr. John Hoskins* swore that L. Russell, at his trial, challenged the jurors for not being freeholders. His Counsel was heard to it, but the Judges overruled it. *Mr. John Charlton* swore he was at L. Russell's trial and heard him demand that the jury should be freeholders; but the Judges refused it, saying it was not requisite. Then a Copy of the Record of the Verdict, Judgment &c. was read. Com. Book.]

26. March 7. *E. Rivers v. Earls of Derby and Strafford and others.*—Petition of Thomas, Earl Rivers. Sets forth a settlement of the manors of Chich St. Asith, Great Clacton and Little Clacton, in Essex, made 12 May 1678, on the marriage of Petitioner's eldest son, Thomas, Lord Colchester, with the Lady Charlotte, sister of the Earl of Derby, with a proviso vesting the premises in the Earls of Derby and Strafford and John Grobbam How, Esq., and Robt. Hide, Gent., in trust to raise 10,000*l.* for the daughters, if any, in default of male issue, and 100*l.* a year maintenance. Lord Colchester died in 1679, leaving by Lady Charlotte one daughter only, Charlotte Catharine Savage. The trustees employed one John Richardson to receive the rents for her portion and maintenance, who died in 1684, leaving Frances Richardson his executrix, and was succeeded, as receiver, by one Thomas Munne. The daughter died in 1687, at the age of 17 and unmarried. Petitioner thereupon brought a Bill in Chancery for payment of the moneys already raised, and for a reconveyance of the trust estate to himself, on the ground that the portion was sunk and gone into the inheritance. The bill was dismissed by L. Chancellor Jeffreys on 18 July 1688. Appeals against this dismissal and prays for relief according to the true intent and meaning of the settlement. L. J., XIV. 142. *Signed* by Appellant; *Countersigned*, Geo. Bradbury. [The case in Chancery is reported in Vernon, ii. 72. The Appeal was heard on 29 April.* After *Sir Wm. Williams* had opened the case, *Mr. Finch* (for Appellant) spoke as to the construction of the proviso. Whether the devise was good or not, was the question. It was the same case in reason with that of Lord Poulet. The lady lived till 17, and made her will; that altered not at all. *Sir Cresswell Levinz* (for E. Derby): If it is once due, I may give it away. It is a present gift, without any future limitation. Cites *Dame Latimer's Case* in Dyer's Reports 59. As to Lord Poulet's case, the same thing had been judged 100 years before. L. Poulet's case was a voluntary settlement; this upon a consideration. Plain words give us this money, and so we need no construction of law. The law is on our side. They flew into Chancery, and there they have the same. The Chancery did not think fit to relieve them. *Mr. Hutchins* (for E. Derby): L. Poulet's case is quite different from this. This lady has made a will. It is not a marriage portion, it is a proportion of her father's estate which she purchased. The Earl of Derby paid 5,000*l.* *Sir William Williams* replies, and speaks to L. Poulet's case, and to the case of a gift for money or legacy. The *L. Privy Seal* then stated the case, and the House heard the Judges. *L. Chief Justice*: the point depends upon the settlement. As to law, she had an immediate right in the portion. Query whether there is any ground of Equity in this case? What hurt is here done?

* Pursuant to an order of the 27th. (MS. Min., 27 April. No entry in L. J.)

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Here is no express interest. *Mr. Justice Gregory*: The question is upon a marriage settlement. At 17 the issue female made a will. What a parent gives to a child, is due, whether the child marry or not. It being so in point of law, and there being no fraud nor accident, that cannot be remedied by law. I think it is plain that there is a consideration. The House then dismissed the Appeal. (MS. Min., 29 April. L. J., XIV. 195).]

Annexed :—

- (a.) 8 April 1689. Answer of William George Richard, Earl of Derby. Charlotte Catharine Savage, made a will before dying, leaving Respondent her sole executor, and having little estate besides the said 10,000*l.*, she gave several great legacies to several persons, and left the residue of her personal estate, after payment thereof, to Respondent. He claims therefore the said portion of 10,000*l.*, as her executor, the trust created by the said settlement being an interest vested in her at the time of her death, as the Court of Chancery declared. Prays that the appeal may be dismissed. *Signed* by Respondent; *Countersigned*, Fr. Pemberton. *Endorsed* as brought in this day.
- (b.) 18 April. Answer of the Right Hon. William, Earl of Strafford. L. Chancellor Jeffreys decreed the 10,000*l.* payable to E. Derby, as Executor of Charlotte Catharine Savage. Respondent joined E. Derby in giving acquittances to Richardson and Munne for trust moneys in their hands, and has never received a penny out of the trust estate, having acted solely as a trustee. *Signed*, Fr. Pemberton. *Endorsed* as brought in this day.
- (c.) 18 April. Answer of Frances Richardson, Widow. Respondent, as her late husband's administratrix, held 366*l.* in her hands, and after the Decree she paid over the balance, then amounting to 387*l.*, to E. Derby, and holds a receipt from him and the Earl of Strafford. Prays that she may not be further troubled, and that the appeal may be dismissed, as against herself. *Signed*, Fr. Pemberton. *Endorsed* as brought in this day.
- (d.) 18 April. Answer of Thomas Munne, Gent. Respondent as Richardson's successor paid the 100*l.* a year maintenance to Lady Colchester during the lifetime of Charlotte Catharine Savage, and after her death, by order of the trustees, paid 200*l.* to Dr. Colladon, her physician during her last illness. Being made a party defendant in Chancery, he put in an account showing 140*l.* in his hands, which he detained pending the suit, and afterwards in obedience to the judgment, paid what was then left, amounting, after sundry expenses deducted, to 130*l.* to the Earl of Derby, and holds his receipt for the same. Prays that the Appeal may be dismissed, as against himself. *Signed*, Fr. Pemberton. *Endorsed* as brought in this day.

27. March 7. Eyre and Attorney-General v. Eyre and others.—Petition of Sir John Heath, Knt., His Majesty's Attorney-General of his Duchy of Lancaster, &c., as in L.J., XIV. 142, and Thomas Eyre [of Gray's Inn]. Recites proceedings ending with the Judgment of the House on 14 Nov. 1685.* Since that Judgment a Commission was issued in 1685, which divided and allotted the fences. The Petitioner Eyre and the Defendants of Wormhill made all their fences, those of Bradwall a great part of theirs, and those of Hope some of theirs;

* L. J. XIV., 81. See also 11th Report, Appendix, Part II., No. 430.

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and the dispute appearing to be at an end, great quantities of Petitioner's grounds were purchased, under a yearly rent, by many persons, who had made great improvement thereof. Notwithstanding all this, the Defendants, together with Rowland Eyre, son and heir of Thomas Eyre, late of Hassop, and Henry Balgay, son and heir of the Defendant Henry Balgay deceased, obtained in 1687, from the Chancellor of the Duchy assisted by Sir Richard Allibone, upon their bare allegation that the Commons were not equally divided, the issue of a Commission to Surveyors to make a new division in Hope and Bradwall. By virtue of this Commission Petitioner and his tenants and purchasers have been stript of the greatest part of their lands, and their corn growing thereon was destroyed by order of Rowland Eyre and others, and most of Petitioner's fences have been destroyed. Pray for relief. *Signed* by Thomas Eyre. *Countersigned*, R. Sawyer. [The cause was heard and judgment was given for Petitioners on 3 May 1689, L. J., XIV. 201. Counsel for Appellants were *Serjeant Birch* and *Sir William Williams*, who said that the question was whether the Orders of the Duchy Court could unsettle what was settled by this House. *Sir Charles Porter*, for the Respondents, said they had taken away the water. *Mr. Ward*, on the same side, said the question was whether Mr. Eyre should have a moiety or the whole. He spoke as to Col. Philips giving his judgment. He thought it fit to set it out, and issued a Commission for that purpose. *Mr. Bradbury*, on the same side, would endeavour to satisfy the House that all the proceedings below had been done with great deference to the Order of the House. MS. Min. of date.]

Annexed:—

- (a.) 5 April. Answer of Rowland Eyre, Esq., son and heir of Thomas Eyre, late of Hassop, Esq., deceased, Henry Balgay, Esq., son and heir of Henry Balgay, Esq., his late father deceased, Thomas Balgay, Esq., Nicholas Thornhill, John Wagstaffe, John Bocking, Robert Hallom, and George Hallom, some part of the freehold tenants of the towns of Hope and Bradwall, parcel of their Majesties' manor of High Peak, in the County of Derby. Respondents, when they appealed against the order of the Duchy Court in favour of Eyre, were not heard a word as to the wrongful division, and when immediately afterwards they petitioned the House for a new division of the lands, they were referred to the Chancellor of the Duchy. The first division of the land, which consisted of about 15,000 acres, was made entirely in Petitioner Eyre's interest, who got all the water and the best land and afterwards used his position as a magistrate to terrorise Defendants, extorting from them nearly 1,000*l.* by force and fear. No fences had been destroyed, and the corn eaten up was where it obstructed a right of way. The reallotment gives him his fair moiety, and is not in contempt of their Lordships' judgment. Pray to be dismissed with costs. *Signed* by the Respondents; *Countersigned*, Ja. Stedman and R. Bretland. *Endorsed* as brought in this day.
- (b.) 5 April. Answer of William Inge, Esq., Adam Bagshaw, Anthony Longden, Humphrey Thornhill, Thomas Fletcher, Richard Bower and others, some part of the freehold tenants of the town of Wormhill, parcel of their Majesties' manor of High Peak, in the County of Derby. To same effect as preceding. *Signed* by the Respondents; *Countersigned* like the above. *Endorsed* as brought in this day.

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- (c.) 13 April. Answer of Robert Phelipps, Esq., late Chancellor of the Duchy of Lancaster. Respondent was made Chancellor of the Duchy in 1687, in November of which year a motion was made in the Duchy Court for a Commission for the equal dividing of the two towns of Hope and Bradwall, whereof Thos. Eyre, the Relator, was to have one moiety, and the Defendants the other; and Respondent being assisted by Judge Allibone, an order was made on 24 Nov. 1687 for awarding a Commission, and the same issued accordingly; and on 22 May 1688 an order was made confirming finally the execution and return thereof. In all these proceedings Respondent acted only as a judge, and according to his conscience and best understanding, and by the advice of the judge assistant, not with any design to injure or prejudice the Relator, nor in contempt of the judgment of the House, nor with any intent to gratify Rowland Eyre, as is suggested by the Appellants. Submits the whole matter to their Lordships. See L. J., XIV. 164. *Signed* Robert Phelipps; *Countersigned* R. Bretland. *Endorsed* as brought in this day.
- (d.) 7 May 1689. Petition of the Respondents, Rowland Eyre and others. If the House of Lords set aside the proceedings in the Duchy Court absolutely, without giving leave for a legal and equal division, Petitioners will be deprived of a great part of the Commons, which they ought to enjoy, as Thomas Eyre claims three parts in four, quantity and quality considered. Pray for an Order to the Duchy Court to make a fair division. *Signed*, Row. Eyre; *Countersigned*, Edw. Ward. [The matter of this Petition, and of the answers thereto below, was heard on 4 June, when after reading the precedents that were found and the order of 3 May, on question whether to admit a rehearing, it was resolved on the negative. L. J., XIV. 233 and MS. Min.]
- (e.) 10 May. Answer of Thomas Eyre to preceding Petition. The division complained of as unequal, was by virtue of a Commission out of the Duchy Court about 1675, for examination of witnesses. No such inequality was proved either then or before the Chancellor of the Duchy in June 1684, whose judgment in favour of Respondent was upheld by the House. Since then, great part of the land decreed to Respondent has been sold, and improved. Appellants after 13 years, moved the late Chancellor of the Duchy for a Commission to make a new division of the lands, which was granted, and Respondent's fences have been thrown down, and his and his tenants' lands taken from them, and the profits lost for the last two years, and this year's profits will also be wasted, to the Respondent's loss of nearly 1,000*l*. Against this order of the Duchy Court Respondent and others appealed to their Lordships, who after long debate decided that the judgment of the House of 14 Nov. 1685 was impeached by the proceedings in the Duchy Court, and ordered the same to be set aside. Hopes that after twelve years' suit, and the matter so often settled, their Lordships will not permit a new division of the lands. Prays to be dismissed with costs. *Signed* by Respondent; *Countersigned* Godf. Thacker. *Endorsed* as brought in this day.
- (f.) 16 May, 1689. Answer of Sir John Heath, Knt., to Petition of Rowland Eyre, Esq. (Annex d). Admits that such decrees were made as are complained of, and hopes they will be supported for the benefit of the Crown. Knows nothing of the

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division complained of, nor as Attorney-General of the Duchy, is he concerned therein. Prays to be dismissed with costs. *Signed* by Respondent; *Countersigned* Godfrey Thacker. *Endorsed* as brought in this day.

- (g.) 16 May, 1689. Answer of the Hon. William Mountagu, Esq., to same Petition. Respondent and the Earls of Chesterfield and Clarendon were trustees for the now Queen Dowager for her life and afterwards for the late King Charles II. when the lands were granted to Eyre, but they have since assigned their trust to others, and know nothing of the division mentioned in the petition. Pray to be dismissed with costs. *Signed* by Respondent; *Countersigned* Godfrey Thacker. *Endorsed* as brought in this day.
- (h.) 16 May, 1689. Answer of Sir James Butler, Knt., to same Petition. Respondent is Attorney-General to the Queen Dowager, under whom Eyre claims the lands, and as such was made party to the original suit. Knows nothing of the division complained of, and prays to be dismissed. *Signed* by Respondent; *Countersigned* Godfrey Thacker. *Endorsed* as brought in this day.
- (i.) 16 May, 1689. Petition of the Appellants in appeal of May 7 (Annex d.), praying that the Recognizance of Mr. Francis Gell, Merchant, may be taken, he being brother-in-law to William Eyre, though not a party to the Petition. *Signed* Rowland Eyre. L. J., XIV. 212.
- (k.) 16 May, 1689. Petition of Thomas Eyre, Esq., for a short day for hearing. L. J., XIV. 212.

28. March 8. Roper v. Roper.—Petition and Appeal of Edward Roper. By a decree of Lord Jeffreys, on 24 Feb. 1668, and subsequent orders, Petitioner's estate stands charged to pay to Respondent 5,580*l.* on pretence of money limited for portions to be raised by a term for 10 years determined above 35 years since and actually raised by Respondent's guardians, and the remainder of the estate was by the same settlement limited in tail to Petitioner, who was under three years of age, when the term of 10 years commenced. Prays that the decree may be reversed. *Signed* by Appellant; *Countersigned* Heneage Finch and Geo. Bradbury. L. J., XIV. 144. [The Appeal was first heard on 23 March. *Sir Charles Porter* (for Appellant) stated that Edward was the son and heir of Anthony Roper. Appellant was content to pay Respondent, if she married. *Mr. Finch* (on same side): The case rose upon the settlement made by Sir Wm. Roper. All the family join in a fine for the heir male. The Lord Chancellor decreed that Mrs. Roper should have her 4,500*l.* from the time Appellant neglected to pay the 150*l.* per annum; so his whole estate was obliged without any law or course of proceedings in Chancery. The profits were received by Defendants. This is the legislative conscience of Chancery. Mr. Roper would make her an allowance to her quality. *Mr. Dobins* followed on the same side. Mr. Anthony Roper had a power to lessen the estate. The will of Mr. Roper read. Upon the death of Mr. Roper they read that the profits were received by Lord Dorset. *Mr. Hutchins* (for Respondent) said the estate in Kent was worth 2,200*l.* a year. Anthony Roper charged the estate to Anne for the payment of her portion. She never signed the second deed in 1664, and had received nothing upon it. Appellant, it was true, paid her 150*l.* a year, but not by any deed. *Mr. Williams* (on same side): The decree was very equitable. The possession of E. Dorset was a doubtful possession.

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The will was made in 1642 (MS. Min., 23 March).—On the 27th the House being moved to put off the consideration of the cause, Mr. Roper was called in, and asked if he was willing to refer it to two. He said he was, as to her maintenance. The House then entered into debate of the matter, and the question being put (as in L. J., XIV. 163), whether to give judgment that day, it was resolved in the negative by 35 to 21, Tellers, L. Lovelace and E. Thanet. (MS. Min. 27 March).—On 3 April the debate being resumed, the decree complained of was reversed. (MS. Min. L. J., XIV. 166).]

Annexed :—

(a.) 20 March. Answer of Anne Roper, Spiuster. The 5,580*l.* was decreed due to Respondent for her own and her dead sister's portions of 5,000*l.* with interest, by virtue of a settlement made by her grandfather, and the Will of her father, and by virtue of several deeds made by Appellant himself. No part of the 5,000*l.* was ever raised out of the estate. Sir Wm. Roper, the grandfather of Appellant and Respondent, duly empowered his son and heir Anthony, their late father, to charge the estate with portions, viz., 2,000*l.* for one daughter, 3,000*l.* for two, and 5,000*l.* for three or more, to be equally divided among them, and to go to the survivor. Anthony accordingly by his will charged his estate with 5,000*l.* portions for Elizabeth, Mary and Respondent, to be paid at 18 years or marriage, and to go to the survivor. Respondent having attained that age in 1661, Elizabeth and Mary being then dead, Appellant covenanted by deed to pay the 5,000*l.* to Respondent within six months after her marriage, and shortly after paid 500*l.* of it to Respondent, and secured the rest by mortgage on the Manor of Chesham in Kent, for which, with interest due thereupon, the decree was obtained in Chancery. Respondent's father having died in 1642 at Oxford in the service of Charles I., in Respondent's infancy, the profits of his estate were received either by the then Powers, or her father's creditors, or Mr. Lisle, the Appellant's guardian, but no part was ever received by Respondent. Prays that the Appeal may be dismissed with costs. *Countersigned* Geo. Hutchins and P. Burdet. *Endorsed* as brought in this day.

29. March 9. Bishop of Winchester.—Letter from the Bishop of Winchester to M. Halifax. States that, understanding by an order sent him that morning by Mr. Browne that the House had been informed that some few ministers in his diocese had neglected to pray for King William and Queen Mary, and being unhappily disabled to attend the House at present, he thought it his duty to inform his Lordship that he did with all possible speed cause the order of the King and Council to be sent down and to be dispersed in his diocese. But the dispersing requiring some time, some parishes might possibly not have received it when the Lord that informed the House received the complaint, whom he humbly desires to name those parishes or at least some of them where the order has not been obeyed, that he might write in particular to the ministers. *Signed* P. Winchester. *Dated* March 9, 1688-9. [Read this day, MS. Min. See L. J., XIV. 144. The MS. Min. of 8 March add:—"Ordered that the L. Marquess of Winton has leave given him to bring in a bill to oblige the clergy to pray for King William and Queen Mary, and that those that will not take the oaths of fealty Mr. Wallop* and Mr. . . ."]

* A Mr. Wallop had been ordered on 4 Feb. to attend the House as an Assistant. L. J., XIV. 116.

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30. March 11. Papists in London (Robt. Clarke). — Petition of Robert Clarke. Petitioner was taken into custody on Thursday last on suspicion of being a Papist and that he had lately been in France. He is ready to prove that neither of these statements is true. Prays to be released without charges. L. J., XIV. 146. [On 28 Feb. L. Lovelace informed the House that one Robt. Clarke came over with a message to the E. Peterborough, then in custody, and he moved that he might be secured. The House ordered accordingly. (MS. Min. 28 Feb., L. J., XIV. 131.)—On 1 March an order was made, on motion, that Clarke should be examined by the Committee on Papists, and Gustavus Sheldon and Andrew Whelpdell were sworn at the Bar to give evidence against him. (MS. Min. 1 March; L. J., XIV. 135.) In Committee, on 2 March *Sheldon*, being called in, said that on Monday last, about 12 o'clock, he was at the Earl of Peterborough's lodgings in the Tower, where Mr. Robt. Clarke came in, and amongst other discourse said he believed Lord Peterborough had heard the joyful news and had drunk freely last night, which made him lie the longer. He said further he parted with the King on Tuesday last in France, and that the King would take shipping at Brest on Thursday for Ireland, and that the Dukes of Luxemburg and Berwick were in Ireland, and said my Lord Dunbarton is at the head of a great army in Scotland, which the King will join with, and that the old army in England will now stick by him; and that one of the greatest men in England is this day gone towards him. Witness further said that Clarke said it was an unmannerly thing in the Parliament that they would not open the King's letter and read it, for it was but what one gentleman would have done for another, for that a lady had that day shown him a copy of the King's letter, the contents of which were that if the Parliament would but make it appear that, if he was any way guilty of the death of Lord Essex, the death of his brother, or imposing a false child upon the kingdom, he would desist from laying any claim to the Crown, otherwise he never would while he lived. *Whelpdell*, being examined, spoke to the same effect, adding that Clarke said that if the Prince had stood to his first declaration, it had been a glorious enterprise, and where he has one friend now, he would have had many more. They were then directed to put their deposition in writing, and bring it to the Committee. *Robert Clarke*, being called in, said he did see these gentlemen at the Earl of Peterborough's. He said the news he had to tell Lord Peterborough was that Lord Bath had had a letter from his nephew at Jersey, which spoke of King James going with 18 men-of-war for Ireland. Denies that he has been in France these three or four years, nor has seen the King since he saw him at Salisbury. Says he is no Roman Catholic, nor ever had any of the King's money, nor has lain out of his lodgings since Christmas. Denies that he said he knew no such King as King William. My Lord formerly promised to procure him a Commission from the King. Knows of none gone to France but Capt. Sibly, a Papist, and Mr. Collins, a Protestant. Prays he may be dismissed.—Recalled, and asked who the lady was that showed him the copy of the King's letter, witness said that a lady whom he knew not, spoke of such a letter at the playhouse door; but witness knew not the substance of it. The lady was masked. *Mem.* Mr. Sheldon lives at the Duke of Norfolk's, Mr. Wheipdell, a linen-draper at the Three Nuns in Cornwall. Ordered that the House be acquainted with what they have sworn. (Com. Book March 2.)] See also notes to No. 6.

31. March 11. Titus Oates.—Petition of Titus Oates D.D. Most humbly sheweth that your Petitioner in the year 1678 discovered a horrid

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Popish conspiracy for the destruction of the late King Charles the Second, his present Majesty and the Protestant religion within these kingdoms, and proved it so fully, that several Parliaments and Courts of Justice before whom he gave his testimony, declared their belief of it, by public votes and the condemnation of several of the conspirators, for which reason, and because your Petitioner would not be terrified by their threats, nor seduced by their promises of great rewards (with both which temptations they often assaulted him) to desist in his discovery, the Jesuits and Papists pursued him with an implacable malice, and endeavoured to take away his fame and life by suborning witnesses to accuse him of capital crimes; but being defeated in that villainous attempt they first procured King Charles the Second to withdraw that protection and subsistence his Majesty had at the request of several Parliaments allowed to your Petitioner, and then instigated his Royal Highness the Duke of York to prosecute your Petitioner in an action of *Scandalum Magnatum* for speaking this notorious truth, viz., that he, the said Duke of York, was reconciled to the Church of Rome, and that it is high treason to be so reconciled, wherein a verdict and judgment for 100,000*l.* were obtained against your Petitioner, and your Petitioner was committed to the King's Bench prison. After this, the same Popish party obtained leave from King Charles II. to prefer two several indictments against your Petitioner for two pretended perjuries, in his evidence concerning the said conspiracy, which they brought on to trial in the reign of King James II. and your Petitioner was upon the evidence of those very witnesses who had confronted him in three former trials, and were disbelieved, and through the partial behaviour of the Chief Justice Jeffreys, in brow-beating his witnesses and misleading the juries, convicted of the said pretended perjuries, and received this inhuman and unparalleled sentence following, viz., to pay two thousand marks to the King, to be divested of his canonical habit, to be brought into Westminster Hall with a paper upon his head having this inscription "Titus Oates, convicted upon full evidence of two horrid perjuries," to stand in and upon the pillory two several days for the space of an hour, to be whipt by the common hangman from Aldgate to Newgate on Wednesday, and to be whipt again on the Friday following from Newgate to Tyburn, to stand in and upon the Pillory five times in every year of his life, and to remain a prisoner during his life. Which sentence being intended, as your Petitioner has just reason to believe, to murder him, was accordingly executed with all the circumstances of barbarity, he having suffered some thousands of stripes, whereby he was put to unspeakable tortures, and lay ten weeks under the surgeon's hands, neither did their cruelty cease here, but because your Petitioner by God's mercy miraculously supporting him, and the extraordinary skill of a judicious surgeon, outlived that bloody usage, some of them got into your Petitioner's chamber whilst he was weak in his bed, and attempted to pull off the plaisters applied to cure his back, and threatened to destroy him. And that nothing within their power or malice might be wanting to complete your Petitioner's misery, they procured him to be loaded with irons of excessive weight for a whole year without any intermission, even when his legs were swoln with the gout, and to be shut up in the dungeon or hole of the prison, whereby he became impaired in his limbs and contracted convulsion fits and other distempers to the great hazard of his life; all which illegal proceedings, and barbarous inhumanities your Petitioner conceives were not only intended as a revenge upon him, but likewise to cast a reproach upon the wisdom and honour of four successive Parliaments, who had given him credit, and upon the public justice of the nation; and humbly hopes that, since the Papists themselves have verified and

confirmed this evidence by their late open and avowed violations of our religion, laws, and liberties, your Lordships will vindicate the proceedings of former Parliaments, and discharge your Petitioner from those arbitrary and scandalous judgments and the unjust imprisonment he lies under. Your Petitioner doth therefore most humbly beseech your Lordships to take his deplorable case into your generous and tender consideration and to give him such redress therein as to your Lordships' great wisdom, justice, and goodness shall seem meet. And your Petitioner shall ever pray, etc., Titus Oates. [Read this day. MS. Min. of date. No entry in L. J. A similar Petition was presented to the Commons on 23 May 1689. C. J., X. 144. See also note to No. 54.]

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32. March 11. Protestant Comprehension Bill.—Amended* Draft of an Act for the uniting their Majesties' Protestant Subjects. Whereas the peace of the State is highly concerned in the peace of the Church, which therefore at all times, but especially in this conjuncture, is most necessary to be preserved; in order therefore to remove occasions of differences and dissatisfactions which may arise among Protestants: Be it enacted by the King's and Queen's Most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons [of] in this present Parliament assembled, and by the authority of the same, That in order to the being a minister of this Church, or the taking, holding, and enjoying any ecclesiastical benefice or promotion in the same, no other subscriptions or declarations shall from henceforward be required of any person but only the Declaration mentioned in a Statute made in the thirtieth year of the reign of the late King Charles the Second, intituled An Act for the more effectual preserving the King's person and Government by disabling Papists from sitting in either House of Parliament, and also this Declaration following, vizt.:— I A.B. do^t [approve of the doctrine and worship and government of the Church of England by law established as containing all things necessary to salvation, and I] *submit to the present constitution of the Church of England; I acknowledge that the doctrine of it contains in it all things necessary to salvation, and I will conform myself to the worship and the government thereof, as established by Law; and I solemnly* promise in the exercise of my ministry to preach and practice according thereunto. And be it further enacted, by the authority aforesaid, that in order to the being collated or instituted into any benefice or promotion, no more or other oaths shall be required to be taken of any person than only the *two oaths* [of fidelity] mentioned in the late Statute made in the first year of the reign of King William and Queen Mary, intituled An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament, and also the oath of Simony and the oath of residence, any statute or canon to the con-

* The additions are marked by italics, the omissions by square brackets. The text shows the Bill as finally amended by the Lords. The amendments made on report are specially noted; all the others were made in Committee.

† This amendment, which Burnet states was his own (Hist. IV., p. 18), was made on report. The Declaration, as reported from the Committee, was as follows: "I, A.B., do approve of the doctrine and worship and government of the Church of England, by law established, *which I do acknowledge to contain* all things necessary to salvation, and I *solemnly* promise in the exercise of my ministry to preach and practice according thereunto."—(Com. Book 15 March.) On question whether the word ("approve") should stand, Contents 3, Not-Contents, 35; Tellers, E. Clare and E. Thanet. The words in italics in the text above were then substituted. L. J., XIV. 167; MS. Min. 4 April.

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trary notwithstanding. And be it further enacted by the authority aforesaid that the two Declarations aforesaid shall be made and subscribed, and the said oaths [of fidelity taken] *mentioned in the said Statute made in the first year of the reign of King William and Queen Mary shall be taken* in the presence of the bishop or his Chancellor or the guardian of the Spiritualities by every person that is to receive any Holy Orders or *keep any public school, and also the said Oaths and Declaration, together with the said oaths of Simony and residence, by every person* that is to have a licence to preach any lecture, or that is to be collated or instituted into any benefice, or that is to be admitted into any ecclesiastical dignity or promotion, before such his ordination, licensing, collation, institution or admission *respectively*. And be it further enacted, that every person that shall from henceforward take any degree in either of the Universities or any fellowship, headship, or professor's place in the same, shall before his admission to that degree or fellowship or headship or professor's place, subscribe the aforesaid Declarations and take the said Oaths [of fidelity] *mentioned in the said Statute made in the first year of the reign of King William and Queen Mary*, in the presence of the Vice-Chancellor or his deputy; [And every person likewise that shall be admitted to be master of any free school shall make the said Declarations and take the said Oaths in the presence of the bishop or Chancellor of the diocese]. Provided that if any of the persons herein-before required to make and subscribe the said Declarations be not in Holy Orders, such person shall not be obliged to make and subscribe all the Declaration herein-before expressed, but only this part thereof, vizt. I. A. B. do* [approve of the doctrine and worship and government of the Church of England by law established as containing all things necessary to salvation] *submit to the present constitution of the Church of England; I acknowledge that the doctrine of it contains in it all things necessary to salvation, and I will conform myself to the worship and the government thereof as established by law,* together with the other Declaration aforesaid mentioned in the said Statute made in the thirtieth year of the reign of the late King Charles the Second. And be it further enacted that the making and subscribing the said Declarations and taking the said Oaths as aforesaid, shall be as sufficient to all intents and purposes aforesaid as if the parties had made all other declarations and subscriptions and taken all other oaths which they should have taken by virtue of any law, statute, or canon whatsoever. [And be it further enacted by the authority aforesaid, that every person already ordained by the laying on of hands of the Presbytery and not by any Protestant bishop of the Kingdoms of England, Scotland, or Ireland, shall nevertheless upon his desire be admitted into the Ministry of this Church by the imposition of the bishop's hands in this form: Take thou authority to preach the word of God and administer the Sacraments, and to perform all other ministerial offices in the Church of England; and from thenceforward he shall be as capable of being collated, admitted or put into, and to hold and enjoy any ecclesiastical benefice or promotion as if he had been ordained according to the form of making and ordaining priests and deacons in the Church of England.] And be it further enacted by the authority aforesaid, that from henceforth no minister shall be obliged to wear a surplice in the time of reading prayers or performing any other religious office, except only in the

* This amendment was made on Report. The Committee had amended the Declaration simply by substituting ("*which I do acknowledge to contain*") for ("*as containing*"). Com. Book, 21 March; MS. Min. 4 April.

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King and Queen's Majesties' Chapels and in all Cathedral or Collegiate Churches and Chapels of this realm of England and dominion of Wales; Provided also that every minister that shall not think fit to wear a surplice as aforesaid, shall nevertheless be obliged to perform all the public offices of his ministry in the Church in a black gown suitable to his degree; [And if it be in a place where a gown is not the daily constant habit of the minister, in every such place the parish shall provide a gown for him to be worn by him during the time of his officiating in the Church.] And be it further enacted by the authority aforesaid that no minister from henceforward shall be obliged to use the sign of the Cross in baptism, nor any parent obliged to have his child christened by the minister of the parish, if the said minister will not use or omit the sign of the Cross according to the desire of the parent, who in that case may procure some other Minister of the Church of England to do it. And be it further enacted by the authority aforesaid, that no minister or ecclesiastical person shall oblige any person to find godfathers or godmothers for any child to be baptized, so as the parents or parent or other friend of such child shall present the same to be baptized, and shall answer for such child in like manner as the godfathers and godmothers are now required to do. And be it further enacted by the authority aforesaid that no minister that shall officiate in the administration of the Sacrament of the Lord's Supper, shall deny or refuse it to any person that desires to be admitted to the same *in a pew or seat in the Church*,* although such person shall not receive it kneeling. And whereas the liturgy of the Church of England is capable of several alterations and [improvements] *additions*, which may free it from exception and may conduce to the glory of God and the better edification of the people; And whereas the Book of Canons [if] *is* fit to be reviewed and made suitable to the present state of the [torn]; And whereas there are divers abuses and defects in the ecclesiastical courts and jurisdiction and particularly for reformation or removing of scandalous ministers; And whereas it is very fit and profitable that confirmation be administered with such due preparation and solemnity as is directed in the late King Charles the Second's Declaration concerning ecclesiastical affairs, issued in the year of our Lord 1660, and a strict care be used in the examination of such persons as desire to be admitted into Holy Orders both as to their learning and manners; We, your Majesties' most dutiful and loyal subjects, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, do most humbly beseech your Majesties to issue out a Commission under your Great Seal directed to the archbishops and such bishops and such others of the clergy† of the Church of England, not exceeding the number of [twenty] *thirty* in the whole, empowering and requiring

* After some debate on this clause in Committee, the addition of these words in italics was at first proposed, but this was negatived by 8 to 7, and it was then resolved by 9 to 8 to omit the clause altogether. (Com. Book 26 March.) On report, the question whether to agree with the Committee in leaving out the clause was resolved in the negative, the votes being equal, viz., Contents 32 (including 2 Proxies); Not-Contents, 32 (including 1 Proxy). Tellers, E. Bridgewater and E. Rochester. The clause was then reinserted, together with the words in italics, leave being given for dissents. MS. Min. 4 April. L. J., XIV. 167.

† The question, on Report, whether to add here the words ("and laity") was resolved in the negative, after a long debate, after reading the following Acts, 3 & 4 Ed. VI. c. 11, 25 Hen. VIII. c. 15 and 35 Hen. VIII. c. 16. The votes were equal, viz., Contents, 29 (including 1 Proxy); Not-Contents, 29 (including 2 Proxies). Tellers, E. Bridgewater and E. Feversham. MS. Min. 5 April, L. J., XIV. 168. The text shows that Burnet is wrong (Own Time, iv., pp. 17-18, edit. 1833) in saying that this proposal for a Commission was offered as a separate proviso.

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them or any twelve of them to meet from time to time and as often as shall be needful and to make such alterations in the liturgy and reformation of the Canons and Ecclesiastical Courts as may conduce to the establishment of the Church in peace and tranquillity, and to present such alterations and reformations *to the Convocation and to the Parliament*, that the same may be approved and established in due form of law. [Read 1st this day, L. J., XIV. 145. The House had been moved on the 27th February for leave to bring in a Bill with this title. (MS. Min. 27 Feb.) On question whether to commit the Bill to a Committee of the whole House, resolved in the negative (L. J., XIV. 147. Contents 24: Not-Contents 27. Tellers, E. Pembroke and E. Chesterfield. (MS. Min. 14 March.) An engrossed proviso* was added, on third reading, after the previous question had been affirmed. (MS. Min. 8 April.) The Bill was sent to the Commons on 8 April, but was laid aside there after a first reading. C. J., X. 84.]

Annexed:—

(a.) Lords' Amendments in Committee. Com. Book, March 15, 21, 22, 25.

(b.) Lords' Amendments on Report. MS. Min., 4 April.

33. March 14.—Oaths of Allegiance and Supremacy Abrogation Act. Amended† draft of an Act for the abrogating of the [former] oaths of Supremacy and Allegiance and appointing other oaths [in their stead]. [For the better discovery of Popish recusants and repressing all usurped and foreign power, and preserving the King and Queen's Majesties in their persons, and the more assured support of their government: Be it enacted by the King and Queen's Most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons assembled in Parliament, and by authority of the same, That in the stead and place of the oath commonly called the oath of Supremacy enjoined or required to be taken by an Act made in the first year of the reign of the late Queen Elizabeth, entituled An Act to restore to the Crown the ancient jurisdiction over the Estate ecclesiastical and spiritual, and abolishing all foreign powers repugnant to the same; And that in stead and place of the oath commonly called the oath of Allegiance enjoined and required to be taken by An Act made in the third year of the reign of the late King James the First over England, entituled An Act for the better discovering and repressing of Popish Recusants; And in all cases where by the said recited Acts, or either of them, or by any other Act or Acts, the said oaths before mentioned, or either of them, are required to be taken (which said oaths are hereby declared and enacted to be utterly abrogated and taken away to all intents and purposes), the two oaths appointed, required, and mentioned in and by an Act of this present Parliament entituled An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament, shall be taken by all such persons and at such times and in such manner, and to the same intents and purposes, and under such penalties and forfeitures as the said two hereby abrogated oaths are so as aforesaid by the said two first recited Acts, or by either of them, or by any other Act or Acts, required to be taken, which said oaths by the said recited Act of this present Parliament and by this present Act so required to be taken, shall be respectively tendered to

* This proviso was, no doubt, attached to the engrossment sent to the Commons. No draft of it is found among the records.

† The words left out in Select Committee are marked by square brackets.

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such persons as are hereby required to take the same, by such person or persons respectively as by any of the aforesaid recited Acts, or any of them, are empowered or required to give or tender the said hereby abrogated oaths, or either of them, in such manner and at such times as by the said recited Acts, or any or either of them, they are respectively authorised or required to make tender of the said abrogated oaths, or either of them, anything in the said recited Acts, or any or either of them, or any law or other statute, usage, or custom to the contrary notwithstanding.*—[Read 1st this day. L. J., XIV. 148. On 15 March, on report from the Committee of the whole House (M. Winchester in the chair), made after considering the first clause, the House referred it to a Select Committee to draw clauses for making clearer the abrogation of the oaths, and for taking away the necessity of receiving the Sacrament to make a man capable of having an office. (L. J., XIV. 148; MS. Min.) This Select Committee ultimately left nothing of the original bill but the title, which they amended. Their proceedings on 16 March are thus recorded:—The clauses drawn by Sir Robert Atkyns are read. *Proposed* that there be a clause to recite that in the Statutes 1 Eliz. and 3 Jac. I. the Oaths of Allegiance and Supremacy required to be taken shall be abrogated, and that in all cases where those oaths are to be taken, these new oaths shall be taken. (*See Annexes a and c.*) That all persons required to take the said oaths by any Statute shall by this Act be obliged to take the present oaths before such persons as shall be commissioned by his Majesty. (*See L. J., XIV. 154 for this clause, which was rejected on report and is not among these papers.*) That all officers be obliged to take the oaths, though there be no such commission. That the King at the Council table may require any person to take these oaths. That all persons refusing shall be liable to all the punishments of the said Statutes. *Ordered*, That Sir Creswell Levinz and Sir Wm. Dolben join with Sir Robt. Atkyns in drawing clauses upon the propositions now given in by E. Nottingham. The papers of propositions are given to Sir Robert Atkyns, as also the Bill (Com. Book 16 March).—On 19 March this Bill was further considered in Committee of the whole House, V. Fauconberg in the chair. *Question*, Whether to proceed now upon the debate of the bill prepared by this House† for abrogating the former oaths of Allegiance and Supremacy and appointing other oaths in their stead. Contents 38, Not-Contents 27. Tellers, E. Manchester and E. Clare. *Resolved* in the affirmative. Then the E. Nottingham reported what was drawn up by the [Select] Committee and the Judges, in order to make the Act suitable for the purpose. *Sir Robt. Atkyns* gives account of what the Committee gave them order to do, and that he took it they had order to draw a clause concerning the Sacrament. After debate, *Question*: Whether this Draft brought in by the Gentlemen of the long robe‡ shall be read? *Resolved* in the negative. A paragraph read, to be added to the Bill for taking the oaths: Agreed to. House resumed. Visct. Fauconberg reported that the Committee have sat on the Bill, and are of opinion that a Committee be appointed to sit to-morrow morning, to which the House agreed. *Ordered*, That it be referred to the same Committee as before at 8 o'clock in the fore-

* The above, occupying two sheets, is the Bill as first introduced, and, together with the papers annexed below (excepting Annex i), which are stitched to it, formed as amended the materials for the Lords' engrossment.

† The Commons' Bill with the same title had just been read a second time and committed. L. J., XIV. 153.

‡ This rejected draft is not among the papers.

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noon in the Prince's Lodgings. (MS. Min. 19 March. *Comp. L. J.*, XIV. 153.)—On the 20th, the Select Committee, with V. Fauconberg in the chair, which had met, but only for a formal adjournment, on the 18th, proceeded further with the Bill. *Agreed*: That the oaths shall not be divided, but whoever is obliged to take the one of them shall take the other. Several new clauses read and agreed to. *Question*: Whether the fourth paragraph shall be part of the Bill. Resolved in the affirmative. In the title leave out (former) and (in their stead). Leave out all after the title, to the end of the Bill, and read the several clauses now agreed on. *Ordered* to be reported with the said amendments.* (Com. Book, 20 March.)—This report was made by V. Fauconberg the same day (L. J., XIV. 154); the proceedings upon it in the House are given in the MS. Minutes as follows:—The amendments read. Read the second time. The amendment in the title read and postponed. First clause read and agreed to (Annex *a*). Second clause (for which see L. J., XIV. 154) read, and after debate upon it, this question was put: Whether to agree with the Committee that this Clause shall stand as it is without Amendment? Contents 24, Not-Contents 37. Tellers, E. Nottingham and E. Macclesfield. *Resolved* in the Negative. Sir Robert Atkyns draws a clause. Third clause (See Annex (*b*)), read and amended, and read again and agreed to. Fourth clause read, drawn by Sir Robert Atkyns. *Ordered* that the assistants do draw a clause according to the sense of the debate this day, and that the House go on with this business tomorrow at 9 of the clock. (MS. Min. 20 March.)—On 21st March the clause drawn by the assistants (See Annex (*c*)) was read and agreed to by the House. Then the fifth and sixth clauses (See Annexes (*d*) and (*e*)), were read and agreed to. The seventh clause read concerning the Sacrament (for which see L. J., XIV. 156). After debate; *Question*: Whether to agree with the Committee in the clause they have brought in to take away the necessity of receiving the Sacrament? *Resolved* in the negative. Leave given to any Lords to enter their dissent. A clause offered and read concerning the peers upon refusal to take the oaths etc. The debate of this proviso (Annex (*i*) below) adjourned till tomorrow. (MS. Min. 21 March.)—On 22 March the House read the clause concerning the peers' refusal to take the oaths. The clause read. The clause agreed to be laid aside. A clause, offered to be added by the Lord Delamer for taking away some of the Declaration in the Act of Uniformity, read. Clause agreed to. (See Annexes (*g*) and (*h*) below.) In the title agreed to leave out the words ("former") and ("in their stead"). The Bill was then ordered to be engrossed, with the clauses and amendments made by the House. (MS. Min. 22 March, L. J., XIV. 157.) The engrossment, consisting of the amended title and of Annexes (*a*) to (*h*) inclusive, was sent to the Commons on 23 March (L. J., XIV. 159) and returned with amendments on 16 April (*ib.* 177). These were considered the following day (*ib.* 178, where the entry is erroneously made to refer to the Dissenters Toleration Bill, No. 19). After debate of the clause concerning the Bishops taking the Oaths, the words in square brackets in § vi. (Fol. Ed.) were added in a separate Schedule; after the word "taken" in § vii. l. 3 all the words to "every" in l. 4 were agreed to be replaced by the words "when he or they shall be required thereunto by Order from His

* The complete text of the Bill as reported from the Select Committee cannot be ascertained, as the portions of it which were rejected on the Report are not extant. Its contents, however, can be partially gathered from the proceedings on Report, which are given below.

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Majesty in Council before such persons as by the said Order shall be appointed to receive the same"; in same Section, l. 6, the words "the time of the refusal of such person or persons respectively" were substituted for "the said first day of August"; and in l. 7 the words "in manner as aforesaid" were substituted for "in such manner" . . . "August" in l. 8 inclusive.* The rest of the Commons' amendments in the earlier part of the Bill were agreed to, and the Bill was referred to a Committee to adjust the amendments (MS. Min. 17 April).—The further amendments proposed by this Committee were agreed to by the House and the Bill was returned to the Commons, who agreed to the first only of the Lords' Amendments. The Division on the question whether to agree with the House of Commons was Contents 32, Not Contents 41 (including 5 Proxies); Tellers E. Nottingham and L. Delamer. (M.S. Min. 20 April.)—On 23rd April the previous question on the Proviso for the maintenance of the non-juring Clergy (L. J., XIV. 188) was negatived by 55 to 26; Tellers, Contents, E. Monmouth, Not Contents, L. Lovelace; and that on the next question † was carried by 55 to 25, Tellers E. Bridgewater and E. Aylesbury. The final question whether to agree with the House of Commons, with this clause added, was carried by 45 to 42 (including 4 Proxies); Tellers E. Bath and E. Scarsdale. (M.S. Min.)—The last Conference, on the 24th, was reported by E. Kingston (M.S. Min.). The Bill received the Royal Assent on the 24th April, 1 W. and M. c. 8. The MS. Min. of 8 June contain this entry:—After debate, the Act made this Parliament for abrogating the Oaths read. The *L. Chief Justice* heard whether the King, as the law now stands, can issue out a Commission for tendering the Oaths before the 1st August. He doth not find any law that will warrant such a Commission; and a Commission in this case will not warrant a Commissioner.]

Annexed :—

- (a.) 20 March. Clauses marked 1, being *verbatim* §§ i. and ii. of the Act. *Noted* Read and agreed 20 March 1688. [What information is given in the MS. Min. or Com. Book as to the origin of this and the following Annexes has been set out in the Note above.]
- (b.) Clauses marked 2, agreed to by the Lords on 20 March as the "Third Clause" [see Note above]. They correspond with §§ iii. and iv. of the Act, but do not contain the word "repeated" in § iii. ll. 2, 3, and § iv. l. 1 (Folio Ed.), and contain the words "or hereafter shall be" after "now is" in § iii. l. 6. In l. 7, after "Baron of Parliament," the Clause as first amended and agreed to by the Lords read as follows:—"before two Deputy Lieutenants of the County where such Archbishop or Bishop or such person of or above the degree of a Baron shall reside or inhabit [which said Oaths and Declaration the said Deputy Lieutenants are hereby required to tender to such person or persons as aforesaid, upon notice of the intention of such persons to take and make the same] which said Deputy Lieutenants are hereby required to repair to the respective places of residence of such Archbishop, Bishop or other person of or above the degree of a baron, and there to tender to such person or persons as aforesaid, upon notice of the intention of such

* All these amendments, except the first, were waived by the Lords on the 23 April. L. J., XIV. 188.

† This relates to the last section of the Act.

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- persons to take and make the same, to tender [sic] the said Oaths and Declaration.* And the said person or persons are hereby required to procure a certificate from the said Deputy Lieutenants of their so taking and making the said Oaths and Declaration to the Lord Chancellor or Lord Keeper or Commissioners of the Great Seal for the time being, which Certificate the said Deputy Lieutenants are hereby required to give, and the said person or persons are hereby required to procure the said Certificate to be filed in the Court of Chancery." These Clauses assumed the shape of §§ iii. and iv. of the Act in consequence of amendments made by the Commons. (C. J., X. 87.)
- (c.) Corrected† Clause marked 3, drawn up by the Assistants of the House, and agreed to on 21st March, as follows:—"And be it further enacted by the authority aforesaid, that if any person or persons shall hereafter take any office or employment ecclesiastical or civil, or shall hereafter come into any capacity in respect or by reason whereof such person or persons would have been obliged to take the said Oaths of Allegiance and Supremacy or either of them, by virtue of the said Statutes made in the first year of the reign of Queen Elizabeth or in the third year of the reign of King James the First, or any other law or statute whatsoever, all and every such person and persons shall from thenceforth be obliged to take the said oaths [of fidelity] *by this Act appointed to be taken* before such person or persons [as shall admit him, her, or them into such office or employment, and also before such person and persons] as were empowered to tender or accept the said Oaths of Allegiance and Supremacy or either of them, by virtue of any law or statute whatsoever, and such person or persons are hereby authorised and empowered to administer the said oaths [of fidelity] *by this Act authorised to be taken.*" [This clause and the next one (Annex (d.)) as far as the word "*mainprise*" were struck out by the Commons, and §§ v., vi., vii., viii., and all of § ix. except the last sentence, which is the end of Annex (d.), and was retained, were inserted instead.]
- (d.) Corrected† Clause marked 4, as follows:—"And be it further enacted by the authority aforesaid, that all and every person and persons that shall *neglect or* refuse to take the said oaths [of fidelity] *hereby required* when tendered to *him or* them by virtue of any such Commission or by any other persons [empowered and] *lawfully* authorized as *aforesaid* to tender and accept the said oaths, shall immediately be committed to prison, there to remain for the space of three months without bail or mainprise, and if at the end of three months such person or persons shall again refuse to take the said oaths, every such person and persons shall be imprisoned for the space of six months more without bail or mainprise. And in case such person or persons shall refuse *also* to make and subscribe the declaration, etc. as in last sentence of § ix. of the Act. [See note to preceding paper.]
- (e.) Clause marked 5, agreed to by the House on 21st March. It corresponds with § x. of the Act except in reading as follows:—(Folio Edit. lines 3 and 8) instead of ("shall take the said Oaths") the words ("*shall be obliged to take the said oaths*").

* The words in italics, which are in the handwriting of Sir Rob. Atkyns, were substituted, on report, for the words preceding them, within square brackets, which had been agreed to by the Select Committee.

† The words omitted are shown by square brackets and those added by italics.

(*ib.* lines 8 and 9) instead of ("make repeat and subscribe the said declaration") the words ("*make the said declaration*").

[The variations above noted are the Commons' Amendments.

C. J., X. 87.]

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(*f.*) Proviso marked 6, as follows: "Provided always that in case their Majesties shall not think fit to require any Non-Commission officer or Warrant officers in the Navy to take the said oaths, such person and persons shall not incur any penalty or disability, so as such person shall make and subscribe the said Declaration in manner aforesaid." [Struck out by the Commons on 13 April, being the Amendment in Press 4, line 39 to 47, referred to in C. J., X. 87.]

(*g.*) Clause marked 7, agreed to by the House on 22 March, being *verbatim* § xi. of the Act. [Offered by L. Delamer. See Note to first paper.]

(*h.*) Clause forming *verbatim* § xii. of the Act. Two papers, (appended to preceding) the first in the handwriting of Sir Rob. Atkyns, and the second being a printed form of the oath. [The Lords' engrossment, as first sent to the Commons, ended here. The remainder of the Act is annexed to the Roll in separate Schedules.]

(*i.*) 21 March. Proviso as follows:—"Provided always that no person of or above the degree of a baron shall incur any of the penalties in this Act for refusing to take the Oath last mentioned, and appointed to be taken by an Act of this present Parliament, intituled An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament, or refusing to make the Declaration in this Act mentioned, but shall for such refusal be left to such penalties as by any Statute or Statutes heretofore made, or which hereafter shall be made, are or shall be appointed for refusal of the Oath of Supremacy, and making the said Declaration respectively." [Offered in the House this day, and after an adjourned debate, agreed to be laid aside on the 22nd. L. J., XIV. 157. MS. Min. of dates.]

34. March 15. *E. Macclesfield v. Fitton* and an^{or}.—Petition and Appeal of the Right Hon. Charles, Earl of Macclesfield. Sir Alexander Fitton having, during Petitioner's exile with Charles II., got possession of his estate, and Petitioner having since the Restoration obtained a decree in Chancery for possession and the deeds (since confirmed by their Lordships on Appeal), Sir Alex. Fitton then set up a mortgage of part of the estate, whereof he had got an assignment to one Jolliffe in trust for him. Petitioner thereupon brought his bill in Chancery for redemption, which was heard on 19 May 1683, by L. Keeper North, who decreed that the consideration money, 2,400*l.*, mentioned in the assignment, should be taken as a stated sum (although Petitioner was no party to the assignment) and should carry interest from that time, and directed an account. Petitioner having been unable from his late absence to procure the Master's report, Lord Chancellor Jeffreys dissolved his injunction, and the Report, when at length ready, was stopped on pretence of an outlawry against Petitioner for pretended misdemeanours, on the motion of the then Attorney-General; whereupon Fitton having got possession covenantously, made leases to his friends and adherents for not half their true value, while the suit was still pending. The decree in directing the account, and making the same evidence is unjust; it being a new law to make mortgagors pay interest

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upon interest, to make a Book of Accounts, made up between other parties, evidence, and to encourage mortgagees to make havoc of mortgagors' estates. Prays that the decree may be reversed, and Fitton and Jolliffe ordered to answer. L. J., XIV. 149. [This Appeal was first heard on 2 May. *Sir Wm. Williams* opened for Appellant. *Mr. Hutchins* (on the same side) cited the House's judgment in "*Hubert v. Porter*." *Sir Charles Porter* (for Respondent) said they had not 4 p.c. for their money, instead of 8 p.c. as the agreement was. No ill course was taken whatever. No profits were received, nor interest. 3,050*l.* was due on making up the account. *Sir Robt. Sawyer*, on same side: *Sir Alexander Fitton* was not at all in this case. A mortgagee had been out of his money 12 years, and so he might sell his interest. There was an entry once and some small interest paid; but nothing paid by the mortgagor. A tradesman's book was evidence in all cases. Appellant had a copy of the book of account. (MS. Min. 2 May.)—On the 3rd the Lord President having stated the case, after debate, the House ordered a rehearing in Chancery (MS. Min. 3 May, L. J., XIV. 200). See *Vernon's Rep.* i. 168 and 11th Report, Appendix, Part II., No. 424.]

Annexed:—

(a.) 16 April 1689. Answer of Thomas Jolliffe, Esq. The estate was mortgaged in 1640 by Sir Edward Fitton to one Mrs. King for 1,500*l.*, which he borrowed of her. He died, leaving principal and interest unpaid. Mrs. King entered, and in 1647 assigned the estate to Benjamin Barron, Esq., who assigned it to Sir Thos. Trevor for 2,400*l.*, though it appeared that there was then 3,050*l.* due to the mortgagee, and William Fitton, the owner of the mortgaged estate, paid Sir Thomas the interest of 2,400*l.* On Sir Alexander Fitton's marriage with Ann, the Respondent's daughter, the mortgaged estate was settled on Sir Alexander and his wife, and 2,400*l.*, part of Ann's marriage portion, was in 1649 paid to Sir Thomas Trevor, who thereupon assigned the mortgage to Respondent's father, William Jolliffe, in trust. The Appellant having, about 1663, got possession of the Estate without satisfying the mortgage, Sir Alexander brought an action of ejectment, whereupon Appellant brought a bill in Chancery against Sir Alexander and Respondent for redemption, and having got an injunction to stay proceedings on the ejectment, kept possession of the mortgaged estate till about three years since. The cause in Chancery coming on for hearing in May, 1681, the account taken was shown to have been a fair one, and the 2,400*l.* to have been duly paid by Sir Thos. Trevor to Barron, and the interest since the assignment regularly paid by William Fitton to Sir Thomas Trevor; and the Court declared that the mortgaged estate ought to stand charged with the interest due on the stated account, but left the Appellant at liberty to contest whether so much as 2,400*l.* was due to Barron at the time of the assignment. Appellant has never shown that less than that sum was due. The Court of Chancery, after some time, being satisfied that the Appellant was unduly delaying, dissolved his former injunction, and Sir Alexander and Respondent, having after 24 years obtained possession of the mortgaged estate, granted leases, &c., in order to raise the money due on the mortgage. Respondent's only interest is that of trustee for Ann Fitton, Sir Alexander's only child, who has always lived with Respondent, and is bred a Protestant. The leases &c. were in no way covenous, but were granted to those who would

give most. The Appellant has no right to appeal, the suit in Chancery being not yet determined. *Signed* by Respondent. *Countersigned* Ambrose Phillippo. *Endorsed* as brought in this day.

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(b.) 20 April 1689. Motion paper praying that Jolliffe be ordered to put in an answer for Fytton, forasmuch as the latter is in Ireland in arms against the King, and Appellants cannot come at him to bring him to answer, and Jolliffe is the only person who has acted in the suit; or that Fytton may be held bound by the Judgment on the Appeal. *See* L. J., XIV. 185.

35. March 15. *Serle v. Sir R. Clerke*.—Petition of Henry Serle, Esq. Petitioner, having agreed in 1679 to purchase of Randolph and Rupert, devisees of Sir John Birkenhead, their interest, being four out of six parts in Lincoln's Inn Little Fields, gave a declaration of trust to Sir Robert Clerke and another to one Doctor Birkenhead, agreeing to hold one third of the four parts for each of them, as trustee, on condition of each paying one third of the purchase money, incumbrances (if any), and all incident charges. Clerke and Birkenhead holding back when the purchase came to be perfected, Petitioner completed it alone. Birkenhead delivered up his declaration. Clerke, though promising to do likewise, pretended his was lost; but after Petitioner had cleared his title and improved the property, brought a bill in Chancery to be relieved on his declaration, and, pending the suit, sold his pretended title to one Dr. Nicholas Barebones [Barbon], who agreed to prosecute the suit in his name. The Lord Keeper North dismissed his bill, and the House of Lords affirmed the dismissal, except only as to the remainder of a lease for 99 years of one other sixth part of the Fields, touching which the Lord Keeper was to review his decree on an untrue suggestion, never stated before, that Clerke had a right to a share of that leasehold part on an alleged bill of sale made jointly to himself and Petitioner by Sir John Birkenhead's executors. Lord Keeper North having died before reviewing his decree, the L. Chancellor Jeffreys, by colour of their Lordships' order of reference, took cognizance of extraneous matter already determined on the appeal, and committed Petitioner to the Fleet and granted an injunction to stay his building on the Fields, because he could not produce his first title deeds, which had long been destroyed as useless, and ordered him to execute a conveyance of the leasehold part to the six Clerks in Chancery; and on hearing the cause touching the leasehold part in 1686, set up a title to Clerke by colour of the declaration of trust, and decreed the six clerks to convey to him a moiety of the leasehold premises, declaring further that a way might be found to reverse their Lordships' decree as to Petitioner's inheritance. Thereupon a bill was brought in the name of Barebones and others to set aside the Lord Keeper's decree which had been affirmed by the House, and Petitioner, who demurred on the ground that their Lordships' judgment was final, was attached for not answering. Prays that Clerke and Barebones and the other Respondents may be ordered to answer and give satisfaction for their arbitrary proceedings. *Signed* by Appellant; *Countersigned* Wm. Williams, Jo. Hawles, and John Clapham. [The appeal was first heard on 6 April 1689. *Sir Charles Porter* (for Appellant) stated that Sir Richard Mason and Serjeant Brampton were executors of the will. The division took place 27 Jan. 1679, the month after Mr. Birkenhead died. There was a contract for four parts. On the 12th and 13th of the following January the conveyances were prepared. Clerke was to have an interest in a third part. Clerke's bond was delivered up, and then comes in Serle and the conveyance made to

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him. The business is the term of 99 years of a fourth part. Sir John Birkenhead had a personal estate in this. Serle and Clerke were jointly interested. Serle paid some of the money. He was purchaser of five parts of the inheritance of 99 years. When Serle had composed the business with Lincolns Inn, and it looked like a good bargain, Dr. Barebone buys of Clerke the moiety of the Fields. The deeds were burned, and then we were ordered to produce them. They were laid by the heels for burning those deeds; they had counterparts of them. The building to this day stands still, and no new matter fell out in Barebone's bill.—*Mr. Williams* speaks as to the sixth part to be a term for years. There is only a sixth part in question. *Mr. Serjeant Hutchins* (for Respondents): Randall and Rupert Birkenhead were the only persons concerned. The deed of 7 Jan. was burnt pending the Appeal before their Lordships. The deeds of 12 and 13 Jan. were burnt. There was evidence suppressed by Serle. *Mr. Thompson* (on the same side) spoke to the destroying the deed. *Sir Charles Porter* replied as to burning the deed. The deeds were altered before the sealing, and, as for the burning it was to his own disadvantage, if any one's. On 19 April, the *L. Privy Seal* stated the case, as argued by Counsel, and the Judges being heard, *Mr. Justice Powell* spoke as to the sixth part. The deeds being plain, he was of opinion that the decree should be reversed. *Sir Edward Nevill* was heard as to the burning the deeds. As to the leasehold, he left it to the opinion of the House. The House then gave judgment, reversing the decree. [MS. Min. 6, 19 April. L. J., XIV. 170, 181.* See also 11th Report, Appendix, Part II., No. 444.]

Annexed:—

- (a.) 27 March. Answer of Michael Scrimshire, Goldsmith, Jonathan Barthrop, Esq., Thos. Powell, Esq., Thos. Alston, Esq., and James Boardman, Gent. Clerke, having sold to Nicholas Barbon his share in the Fields for 3,000*l.*, of which 2,000*l.* was paid and the rest agreed to be paid, conveyed the same in 1682, by Barbon's direction, in trust to Scrimshire, as a security for moneys lent by him to Barbon. Scrimshire becoming bankrupt, the premises were assigned by the Commission to Barthrop, Powell, Alston, and Boardman, as trustees for his creditors. The trustees were made parties to Clerke's bill in Chancery against Serle, and set forth their title, but they were never served with any order of Court to rejoin or hear judgment. They believe that L. Chancellor Jeffreys' decree was just. They were no parties to Clerke's Appeal to the House, but they consented to the bringing of the new bill in Chancery, from which Serle now appeals, being advised that the dismission in no way affected their equitable interest, they claiming under Scrimshire, who claimed under Barbon, and he claiming under Clerke, long before Clerke's bill was exhibited. Pray that the Appeal may be dismissed. Signed by Respondents; Countersigned Geo. Hutchins. Endorsed as brought in this day.
- (b.) 27 March. Answer of Nicholas Barbon, Doctor in physic. Respondent purchased of Clerke his moiety of the Fields, being satisfied as to Clerke's title by his production of the two deeds of trust. Serle refused to execute a conveyance, on pretence that Clerke had promised to release the deed of trust.

* The words in the judgment "leasehold sixth part" were originally "fifth part." The alteration was made, on motion on 23 April. (MS. Min.)

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The matter coming on for review before the L. Chancellor Jeffreys, on reference from the House, Serle burned the deeds showing Clerke's title, fearing that their production would discover the deficiency of his own title, and for this offence was committed. Respondent was advised to bring the new bill in order to have the whole matter brought again before their Lordships, and a full discovery made of Serle's foul practices, whose demurrer was to prevent such discovery. Prays for relief upon the whole matter. *Signed* by Respondent. *Endorsed* as brought in this day.

- (c.) 28 March. Answer of James Mathews, Gent. Respondent, as a trustee for Scrimshire's creditors, of whom he is one, is entitled with his co-trustees to all Scrimshire's interest in the Fields, and hopes that both Clerke and Barbon will be excluded from any estate therein, unless they discharge what Barbon owes to Scrimshire. Respondent was in no way privy or consenting to the last bill, and if his name was inserted, it was without his order and against his wish. Prays to be dismissed with costs. *Signed* by Respondent. *Endorsed* as brought in this day.

36. March 15. Andrew Dyer.—Petition of Andrew Dyer. Petitioner having stopped a hoy at Gravesend, with several Popish passengers on board, as set forth in his case annexed, has been much molested. Prays that the Master's proceedings at law against him may be stayed, and the Mayor of Gravesend, the Master, William Read, and his brother Charles Read, may be ordered to attend. L. J., XIV. 149. [On the 22nd *Mr. Thompson* (Counsel for the two Reads) opened the case. His client William was the master of a vessel. Dyer got a vessel, and took 2,000*l.* worth of goods out of the ship. Read had lost his voyage. *The Mayor of Gravesend* spoke for himself. Dyer was told what they had said. He caught Warner and Prance* going aboard. He took only 3 trunks and a sword. *Mr. Danyell* (Counsel for Dyer) said his client thought to do his country service, and so stopped priests. The captain of the vessel was guilty of letting persons escape. The Lord Privy Seal then opened the case, and the Petition was dismissed. MS. Min. 22 March. L.J., XIV. 158.]

Annexed:—

- (a.) 15 March. Case of Andrew Dyer. On 12 December last, the late King being withdrawn, and several Irish soldiers being on board the ship "Asia," near Gravesend, who came from thence in boats to the town and fort, a report was spread that the Irish were murdering the Protestants. Petitioner with his neighbours rose to assist the townsmen, and Petitioner seized Father Warner, an Irish priest, and Miles Prance, who were then in a boat waiting to be put on board a hoy at Gravesend bound for Dunkirk, and then with 5 or 6 assistants boarded the hoy, and brought her to shore, with many Popish passengers, their goods, and a considerable quantity

* On 6 Feb. 1688-9 the House was moved that Prance be sent for, being taken at Gravesend. Mr. Bradbury gave an account of Prance's conviction of perjury. He had judgment to be whipped and stand in the pillory. He was pilloried but not whipped. E. Winchelsea was recommended to take care that Prance, now in custody of the Mayor of Gravesend, be brought to the House. (MS. Min. of date. No entry in L. J.)

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of money and plate. No Admiralty officer being present, Petitioner placed two men, with the Master's servants, to secure the hoy, and then went to the Lords at Whitehall for orders about Warner and France. While there, the Mayor of Gravesend let France escape, who was soon after retaken in the same vessel by another name; and Mr. Joynes, the water-bailiff, by warrant from the Admiralty, seized the vessel, discharged the persons, and brought her up to St. Katherine's. Petitioner obtained an order from the Lords to commit Warner to the county gaol, which he served on the Mayor, who suffered him however to escape, but kept his property. The Master got leave from the Prince of Orange to pursue his voyage, but instructed his brother, before going, to prosecute Petitioner, and two vexatious actions have been brought against him, and Charles Read, who is a Custom-house officer, has seized goods, &c. from the Petitioner to the value of 50*l*.

37. March 16. Countess of Burlington v. E. Salisbury.—Petition of Elizabeth, Countess of Burlington. Complains of the present Earl having sent his younger brothers out of her care, to be educated in France, as she believes, in the Roman Catholic religion. Prays that, the Earl being under confinement, she may have such directions and assistance as may enable her to perform her trust. Rest as in L. J., XIV. 151. [Before the Committee, to whom the matter was referred (*ib.* 160,) *the Countess of Burlington* deposed that she spoke to E. Salisbury, desiring that his brothers might come back, that the elder might go to Cambridge, but his Lordship said that he would lose his time there, and that his brothers had no mind to go again to school. He told the schoolmaster of Eton that because of her importunity his brother William should go to him again. I sent to my Lord to desire I might speak with his brothers, but they were denied to be at Salisbury House. About the time that Lord Salisbury told Mr. Billers that through my importunity they were to come to school, I believe my Lord sent them to France. They went at first to Eton school by my Lord's consent. They were taken away, I conceive, by Lord Salisbury.—Mr. Roderick's letter of 16 Aug. 1688 is read, proposing Mr. William Cecil's going to Mr. Billers at Cambridge, and acquainting him that Lord Salisbury had taken his brothers away. Mr. Roderick's second letter of 23 Aug. 1688 is read, concerning sending Mr. W. Cecil to Cambridge. *Countess of Burlington*: My Lord objected against Mr. Cecil's going to Cambridge, because he would lose his time there, but said Mr. Billers was a very honest gentleman. Mr. Biller's letter of 4 Oct. to my Lady is read. A second letter of his of 29 Sept. is read. *Dr. Tillotson* (sworn at the bar) says that he and Dr. Mapletoft and Mr. Fisher placed my Lord's brothers at Eton. Mr. Fisher told me they were sent into France. I desired Mr. Dobins, my Lord's Counsel, to advise my Lord to send for them back. I waited on my Lord at Cant[erbury] and desired him to recall his brothers. My Lord said they were in France, but they cried to my Lord, he said, to go thither. At my importunity my Lord sent a letter to his brothers in Paris to return. Mr. William Cecil answered by letter that they should return no more till they could come to their advantage and call us to an account. A letter from Mr. Cecil to Mr. Fisher from Calais is read, dated 23 Sept. 1688. *Mr. John Fisher* (sworn at the Bar) says that he received the letter from Mr. Cecil, and believes it to be his hand. *Dr. Mapletoft* (sworn at the Bar) says he knows the two Mr. Cecils were at Eton School. (A letter from Mr. William and Mr. Charles

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Cecil to Mr. Fisher, dated 23 Feb. 1688, is read.) He says the young gentlemen were placed in Eton school by my Lord Salisbury with the Countess of Burlington's consent. They came to my Lord's at Whitsuntide; they were unwilling to return, complaining of their tutor; he went to Eton and spoke to the master and tutor to use them gently, whereupon Mr. W. Cecil told him he would stay a year or two there. *Mr. Ebenezer Sadler* (sworn at the Bar) says he knows the two Mr. Cecils were at Eton school. Lord Salisbury told him his brothers were gone into France. He saw them at Salisbury House on Friday, and heard on Monday morning that they went away on Saturday. (Dr. Tillotson's letter of 3 July 1683 to Lady Burlington is read.) Lady Burlington commanded witness to return them no money, nor has he returned any. Lady Burlington and the witnesses withdraw.—On 2 April *William Smith* (sworn at the Bar) is called in and asked what he knows concerning Mr. Cecil's being in Salisbury House at the time of their going away. He says that in October last, about 12 o'clock one night, he packed up Mr. William and Mr. Charles Cecil's linen in a little portmanteau for them in Salisbury House (Lord Salisbury being then in the house). They went from Salisbury House about 2 or 3 o'clock in the morning of the same night towards the water-side.—The Report, as first drafted on 27 March, corresponds with that in L. J., XIV. 166, except in reading (in lieu of the last portion relating to Smith's evidence, which was ordered to be added to the Report on 2 April) these words :—"It likewise appearing by Mr. William Cecil's "letter from Calais of the 23rd of September last to Mr. Fisher, that the "said Earl gave them leave to go to France and took great care of "them; And it further appearing by the said William and his brother "Charles' letter of the 23rd of February last to the said Mr. Fisher, "that they were then at Paris, where they pretended their stay was by "the late King James' express command." *Ordered* to be reported, That the Committee being satisfied that the Earl of Salisbury did take his brothers from Eton School, and was instrumental in sending them to France, is of opinion, that his Lordship be required to cause them to be returned to the Countess of Burlington within , or otherwise that it may be a great inducement to the House to believe that they are detained there by his order, and will proceed accordingly with his Lordship. (Pet. Book 27 March, 2 April.)—On 10 May, E. Devon, Lord Steward, acquainted the House that E. Salisbury had sent for his brothers, and that the person he sent, fell sick at Dover and did not recover till the 30th of April, and then the pass was out; but he will take care that they shall come over suddenly. Nothing ordered. (MS. Min. 10 May.) See also L. J., XIV. 208.]

Annexed :—

(a.) 25 March. E. Winchelsea's report of E. Salisbury's answer.
L. J., XIV. 160. *In extenso*.

38. March 18. Oaths Bill.—Commons' Engrossment of an Act for abrogating the Oaths of Allegiance and Supremacy and establishing others in their Place :—Whereas in the Declaration of the Lords Spiritual and Temporal and Commons assembled at Westminster made the twelfth day of February, one thousand six hundred eighty-eight, it was resolved that the Oaths hereinafter mentioned should be taken by all persons of whom the Oaths of Allegiance and Supremacy might be required by law instead of them and that the Oaths of Allegiance and Supremacy be abrogated; Be it therefore enacted by the King and Queen's most Excellent Majesties by and with the advice and consent of the Lords Spiritual and Temporal and Commons now assembled in Parliament,

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and by authority of the same, that the Oath of Allegiance or Obedience appointed and contained in an Act of Parliament made in the third year of the reign of King James the First; intituled An Act for the better discovering and repressing of Popish Recusants, shall from henceforth cease and be abrogated and be no more required of or imposed on or tendered to any person or persons whatsoever, nor shall any person or persons from henceforth incur or suffer any damage, prejudice, penalty, loss or disability for not taking the same, or not requiring the same to be taken by any person or persons or not tendering the same to any person or persons at any time or times hereafter but in lieu thereof the oath of Obedience and Allegiance to be taken by the subjects of this realm shall be in the form and tenor hereinafter mentioned and no other:—

I, A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God.

And be it further enacted by the authority aforesaid, that the Oath of Allegiance and obedience hereinbefore mentioned and appointed in form hereinbefore expressed shall be from henceforth tendered and taken instead of the said former Oath of Allegiance or Obedience in all cases where the said former Oath of Allegiance or Obedience ought to have been, or might have been tendered and taken before the making of this Act; And that all and every Act and Acts of Parliament being in force in this kingdom on the first day of December in this present year of our Lord one thousand six hundred eighty-eight, whereby the said former Oath of Allegiance hereby abrogated was appointed, directed or enjoined to be tendered or administered to or taken by any person or persons, shall from henceforth extend to and be in force as to the Oath of Allegiance and Obedience hereby appointed to be taken in such manner and under such and the like pains and penalties, forfeitures and disabilities as in such Act and Acts of Parliament are mentioned, and that all and every Court and Courts, person and persons by the said Acts so in force on the first day of December or any of them enabled, required or appointed to tender or administer the said former oaths of Allegiance or Obedience to any person or persons, are and shall be enabled and required to tender and administer the Oath of Allegiance and Obedience herein-before appointed in such manner, to such person and persons, and in such case or cases as the said Court or Courts, person or persons ought to have tendered or administered, or might have tendered or administered the said former Oath of Allegiance or Obedience in case this present Act had not been made; And that all and every person and persons enjoined, appointed or required by the said Acts of Parliament so in force on the said first day of December, or any of them, to take the said former Oath of Allegiance hereby abrogated, shall from henceforth take the Oath of Allegiance by this present Act appointed in such manner, within such time, and in all and every such case and cases as he or they ought to have taken the said former Oath of Allegiance and Obedience by virtue of the said Acts of Parliament so in being on the said first day of December, or any of them in case this present Act had not been made, and shall be subject and liable to such and the like pains, penalties, forfeitures, and disabilities for the refusal, denial, or omission to take the said Oath of Allegiance hereby appointed as he or they should have been liable and subject to in the like case for omission, refusal or denial to take the said former Oath of Allegiance or Obedience by the said Acts of Parliament so in force on the said first day of December, or any of them in case this present Act had not been made.

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And be it further enacted by the authority aforesaid that the Oath of Supremacy appointed and contained in an Act of Parliament made in the first year of the reign of the late Queen Elizabeth, intituled An Act to restore to the Crown the ancient jurisdiction over the estate ecclesiastical and spiritual and abolishing foreign powers repugnant to the same, shall from henceforth cease and be abrogated and be no more required of or be imposed on, or tendered to any person or persons whatsoever, nor shall any person or persons from henceforth incur or suffer any damage, prejudice, penalty, loss or disability for not taking the same, or not requiring the same to be taken by any person or persons, or not tendering the same to any person or persons at any time or times hereafter, but in lieu thereof the Oath of Supremacy to be taken by the subjects of this Realm shall be in the form and tenour herein after mentioned and none other :—

“I, A.B. do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position that Princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murdered by the subjects, or any other whatsoever, And I do declare that no Foreign prince, power, person, prelate, state or potentate have or ought to have any jurisdiction, power, superiority, pre-eminence or authority ecclesiastical or spiritual within this realm. So help me God.

And be it further enacted by the authority aforesaid, that the Oath of Supremacy herein before mentioned and appointed in form herein before expressed shall be from henceforth tendered and taken instead of the said former Oath of Supremacy in all cases where the said former Oath of Supremacy ought to have been or might have been tendered and taken before the making of this Act; And that all and every Act and Acts of Parliament being in force in this kingdom on the first day of December in this present year of Our Lord one thousand six hundred eighty-eight whereby the said former Oath of Supremacy hereby abrogated was appointed directed or enjoined to be tendered or administered to, or taken by any person or persons, shall from henceforth extend to and be in force as to the Oath of Supremacy hereby appointed to be taken in such manner and under such and the like pains, penalties, forfeitures and disabilities as in such Act and Acts of Parliament are mentioned; And that all and every Court and Courts, person and persons by the said Acts so enforced on the said first day of December or any of them inabled required or appointed to tender or administer the said former Oath of Supremacy to any person or persons, are and shall be enabled and required to tender and administer the Oath of Supremacy herein before appointed in such manner to such person and persons and in such case or cases as the said Court or Courts, person or persons ought to have tendered or administered or might have tendered or administered the said former Oath of Supremacy in case this present Act had not been made, and that all and every person and persons enjoined, appointed or required by the said Acts of Parliament so in being on the said first day of December, or any of them to take the said former Oath of Supremacy hereby abrogated, shall from henceforth take the Oath of Supremacy by this present Act appointed in such manner within such time and in all and every such case and cases as he or they ought to have taken the said former Oath of Supremacy by virtue of the said Acts of Parliament so in being on the said first day of December or any of them in case this present Act had not been made; And shall be liable and subject to such and the like pains, penalties, forfeitures and disabilities for the refusal, denial or omission to take

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the said Oath of Supremacy hereby appointed as he or they should have been liable and subject to in the like case for omission, refusal or denial to take the said former Oath of Supremacy by the said Acts of Parliament so in force on the said first day of December or any of them in case this present Act had not been made.

Provided always and be it declared that nothing in this Act contained shall be taken or construed to alter, change or avoid a certain Act made in this present Parliament, intituled An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament or anything therein contained but that the said Act shall stand, remain and be observed, construed and put in ure as if this present Act or any clause or clauses herein had not been made, so as the member or members of either House of this present Parliament respectively do or shall after the first day of March in the year of our Lord one thousand six hundred eighty eight, before they sit and vote in either House of Parliament, take the oaths and make declare and subscribe the declaration in the last recited Act required. And in default thereof, it is hereby declared and enacted that they and every of them so making default shall be by virtue of this Act subject unto the penalties, forfeitures and disabilities contained in the Act made in the Thirtieth year of King Charles the Second, intituled An Act for the more effectual preserving the King's Person and Government by disabling of Papiats from sitting in either House of Parliament.

And be it further enacted that all and every person and persons who were obliged to take the former Oaths of Allegiance and Supremacy by an Act of Parliament made in the five and twentieth year of the reign of King Charles the Second, intituled An Act for preventing dangers which may happen from Popish recusants who shall not have taken the said oaths hereby appointed before the first day of April now next ensuing, shall on or before the thirteenth day of May take the oaths hereby appointed in the same manner as the former oaths are required and under the pains, forfeitures and disabilities contained in the said last recited Act of Parliament, notwithstanding the said person or persons have already taken the said former oaths of Allegiance and Supremacy hereby repealed.

And be it further enacted that the Oath appointed by the Statute made in the thirteenth year of King Charles the Second, intituled An Act for ordering the forces in the several counties of this kingdom, the form and words of which Oath are in the same Statute expressed, and also so much of a Declaration prescribed in another Act made in the same year, intituled An Act for the uniformity of public prayers and administration of sacraments and other rites and ceremonies and for establishing the form of making, ordaining and consecrating bishops, priests and deacons in the Church of England, as is expressed in these words, vizt. I, A.B. declare that it is not lawful upon any pretence whatsoever to take arms against the King, and that I do abhor that traitorous position of taking arms by his authority against his person or against those that are commissioned by him, shall not from henceforth be required or enjoined nor any person suffer any forfeiture, penalty or loss by the not taking, subscribing or making the said Oath or the said recited part of the said Declaration, the last forementioned Statutes or any other law or Statute to the contrary in any wise notwithstanding. *Parchment Collection.* [Brought from the Commons this day. *Endorsed,* Brought from the Commons, twice read, and committed, and the Lords proceeded upon their own Bill (No. 33), L. J., XIV. 152, 153. No further proceedings.]

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39. March 18. Commissioners for Great Seal Act.—Amended* draft of an Act for enabling Lords Commissioners for the Great Seal to execute the office of Lord Chancellor or Lord Keeper. Whereas their most Excellent Majesties *King William and Queen Mary* have been graciously pleased by their Commission under the Great Seal of England, dated the [fifth] *first* day of March in the first year of their reign, to constitute, nominate, and appoint during their Royal pleasure, the Right Honorable Sir John Maynard, Knt., Anthony Keck, and William Rawlinson, Esquires, to be Commissioners for the custody of the Great Seal of England, thereby giving and granting unto them, or any two of them, full power and authority to do, perform, and execute all and every those thing and things which to the office or place of Lord Chancellor of England, or Lord Keeper of the Great Seal of England do appertain or belong, or at any time heretofore did belong or appertain, or ought or accustomed to belong or appertain, by reason of any grant, prescription, or which otherwise were lawfully used or executed, together with all and singular privileges, wages, fees, profits, advantages, perquisites and emoluments to the said office or place of Lord Chancellor of England, or Lord Keeper of the Great Seal of England lawfully belonging or appertaining, as by the said Commission appears; and whereas several authorities, jurisdictions, and powers are by several Acts of Parliament, and also several other powers and rights of visitation of several Colleges, Hospitals, Schools, and other places, are by virtue of several other Acts of Parliament, charters, constitutions, and Statutes of those colleges, schools, and hospitals, or otherwise vested, settled, and placed in the Lord Chancellor of England, or Lord Keeper of the Great Seal of England for the time being; now for the preventing of all doubts, questions and scruples that may arise whether all or any of those authorities, jurisdictions, powers and rights be well and sufficiently thereby vested in, or given to the said Commissioners; Be it enacted and declared, and it is hereby enacted and declared, by the King and Queen's Most Excellent Majesties, and by and with the assent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by authority of the same, that the said Lords Commissioners and [Commissioner] *Commissioners* for the Great Seal according to the Commission already to the present Lords Commissioners granted, or any other Commission to be granted by their Majesties to them, or any two [or one] of them, in the absence of the other, and all other Lords Commissioners to be thereunto hereafter by their Majesties appointed, have and hath and ought at all times according to their respective Commissions, during their respective Commission, to have, use, and execute, as of right belonging to their office of Lords Commissioners of the Great Seal of England, for the time being, all and every the same and like authority, jurisdiction, and execution of laws, and all other customs, privileges, emoluments, and advantages which the Lord Chancellor of England, or Lord Keeper of the Great Seal for the time being, of right ought to use, have, or execute, as belonging to their or either of their said offices, or otherwise howsoever, to all intents and purposes, as if the said Lords Commissioners for the time being were Lord Chancellor or Lord Keeper of the Great Seal of England, and shall have and take place next after the peers of this realm. † [Read 1^a

* The additions are shown by italics, the omissions by square brackets. They form the amendments made in Committee on 23 March (Com. Book), with the exception of the last one, which was made on re-commitment, 26 March (Com. Book).

† Here a clause marked † and clauses A. and B. (see annexes (a), (b), and (c)) are marked for addition to the draft.

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this day, L. J., XIV. 152. The Bill was amended in Committee, as marked above, on 23 March, and reconsidered in Committee on recommitment on 26 March and 4 April, when two more clauses (Annexes *b* and *c*) were added. After two free Conferences, the Bill finally received the Royal assent on 22 June L. J., XIV. 252. 1 Will. & Mar. c. 21. in Folio Ed.]

Annexed :—

(*a.*) 23 March. Lords' Amendments to the Bill. [Made in Committee 23 March and, on recommitment, on 26 March and 4 April (Com. Book), and reported 4 April. In addition to the amendments marked on the draft above, they include a proviso marked † to be added at the end of the Bill, which appears as § ii. of the Act. This proviso seems to have been offered by *Sir William Rawlinson*, who informed the Committee that he and his brother Commissioners did not desire that one Commissioner only should have power to make decrees, or put the Seal to anything (Com. Book 23 March). On recommitment, however, the Commissioners proposed that this proviso should be left out, and then they would apply themselves to the King to enlarge their power, so that any one of them might do the ordinary things of the Court touching the interlocutory proceedings in any cause. The proviso was diminutive of the King's prerogative. The Committee then ordered to report that upon what had been represented by the Lords Commissioners, concerning the leaving out the proviso formerly reported from the Committee to be added to the Bill, the Committee thought fit to report it specially to the House, to do what they think fit in it (Com. Book 26 March). The proviso was agreed to by the House on 4 April. L. J., XIV. 169 and MS. Min.]

(*b.*) 25 March.—Clause, marked A., concerning the mode of choosing the *Custos Rotulorum*, being § iii. of the Act. At the back are these words: "And it is further enacted by the authority aforesaid, that no decree shall be made, nor the whole Broad Seal shall be put to anything whatsoever unless there be two Commissioners present." *Compare* Proviso in preceding paper. [This and the next clause were offered to the House this day on report. In the course of debate, it was proposed that the Lord Chancellor should not have the disposal of the places of Masters in Chancery. In the division on the question stated in L. J., XIV. 161, the Contents were 32 and the Not Contents 33, the respective tellers being E. Oxford and E. Macclesfield (MS. Min. 25 March). In Committee, on recommitment, the Lord Commissioner Maynard said the right of naming Clerks of the Peace was anciently in the Chancery, but the Commissioners must leave it to their Lordships. It was in the King's grant to them. On question whether Clauses A. and B. should be added to the Bill, it was resolved in the affirmative by 8 votes to 1. (Com. Book, 26 March, 4 April.) These Clauses were afterwards agreed to by the House on report after recommitment. (L. J., XIV. 167.)]

(*c.*) 25 March.—Clause, marked B., concerning buying or selling the Clerkships of the Peace, being § vii. of the Act. [See notes to preceding.]

(*d.*) 14 May.—Lords' Reasons for disagreeing to certain of the Commons' Amendments. C. J., X. 153. *In extenso*. The Commons' resolutions thereupon are noted in the margin. [Reported from a select Committee this day (Com. Book, 10, 11,

and 14 May, and L. J., XIV. 210), and read at the Conference on the 27th, C. J., X. ut sup.]

(e.) 12 June.—Commons' Reasons for insisting on certain of their Amendments. C. J., X. 177-78. *In extenso*. The Lords' resolutions thereupon are noted in the margin.

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40. March 25. *Agutter v. Collins*.—Petition of Nathaniel Agutter and Mary, his wife. Thomas Jenison, Esq., brother of the Petitioner Mary, died suddenly in 1681 without issue, leaving Mary and her sister Elizabeth, wife of Samuel Collins, the coheirs of the rectory or parsonage impropriate and tithes of Irchester, and divers lands there and elsewhere in the counties of Northampton and Bedford, worth 350*l.* per annum, and of a personal estate worth 4,000*l.* One Amy Pack, a servant of Mr. Jenison's, being bribed by Samuel Collins, a counsellor at law, and son of the said Elizabeth, got her master's keys into her custody, after his death, and gave them and all writings to Collins, who, with the servant, ransacked the house at night, and found the draft of a will, which he concealed from Petitioners till his return from London, when he told them he had found his uncle's will, leaving him, as sole executor, all his property, but refused to show it to Petitioners, pretending only to read part of it to Mary, who was over 60 years old, and almost blind, and ignorant of such things. Collins promised Nathaniel a good gratuity if the Petitioners would join in a fine (the deed for which he had brought down ready prepared), on the pretence of strengthening the legacies and annuities given to Petitioners and others. Petitioners were at last induced to levy the fine and seal the deed of uses, Collins promising to give them a copy of the will and also 450*l.*, and that the fine should not prejudice Petitioners' title if the will should turn out to be not good. After Collins' death, Petitioners finding that the will was only a draft, and was void by the Statute of Frauds, brought a bill in Chancery against the Respondents to have the benefit of their agreement and their share of the property, notwithstanding the fine, but the Bill was dismissed by the Lord Chancellor Jeffreys in 1686 without hearing the proofs. Appeal from this dismissal. *Countersigned Will*. Killingworth. L. J., XIV. 161. [The Appeal was heard on 10 May. *Sir William Whitelocke* and *Mr. Finch* appeared for the Appellants. *Mr. Hutchins*, for the Respondents, stated that Jenison had declared several times that he would make Mr. Collins his heir. *Sir Charles Porter*, on the same side, argued that there was no surprise; there was a resting of three years complete. *Sir W. Whitelocke*, in reply, spoke of the ill getting of the fine. As to the kindness Jenison had to Collins, that was nothing, there being no real will. The *Lord Privy Seal* then stated the case, and after debate, on question whether the Appeal should be dismissed, it was resolved in the affirmative, by 20 votes to 19, *E. Bridgewater* and *E. Aylesbury* being the respective Tellers. MS. Min. 10 May. L. J., XIV. 207.]

Annexed:—

(a.) 5 April.—Answer of Samuel Collins, Gent., Jane Collins, Widow, Anne and Margaret Collins, both Infants. Mr. Jenison, who was a bachelor, often declared great kindness for his nephew the late Samuel Collins, and said that he would leave his estate to him, and did so accordingly by his will, whereby he gave Collins all his real and personal property, charged with several legacies and annuities amounting to above 700*l.*, over and beside the annuities, chargeable on his real estate, of 10*l.* to the Appellant Mary, her son Nathaniel, and her daughter Mary

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Coales, 20*l.* to the vicars of Irchester, and 5*l.* to the poor of that parish. Mr. Jenison dying suddenly did not sign or seal his will, which was in his own writing, whence disputes arose between the Appellants and the late Mr. Collins as to the validity of the will. For the reconciling of these disputes, and for a conveyance to be executed by the Appellants to the said Collins, a treaty was had, and the Appellants by their Counsel at first demanded 1,000*l.* as the consideration of that conveyance, but at last agreed to take 450*l.*, which accordingly Mr. Collins paid them, and in consideration thereof, and of securing the annuities to the Appellant Mary and her children and the other legacies devised by the will, the Appellants by fine and deed, dated 9 Sept. 1681, conveyed their moiety of the premises to the said Collins, who died, leaving three children, the Respondents Samuel, Anne and Margaret, and by his will charged the premises with 60*l.* a year to the Respondent Jane for her life, and with 700*l.* apiece to the Respondents Anne and Margaret, when they came of age or married, and maintenance meanwhile. Since the Appellants' bill in Chancery was dismissed in 1685, the Respondent Samuel, on his marriage, agreed, in consideration of 1,500*l.* marriage portion, to settle the lands on himself for 99 years, remainder to his sons successively, and their heirs, and to charge the lands with an annuity of 80*l.* for his wife, in case she survived him, for her jointure in lieu of her dower. Appellants acquiesced in their own deed and fine while the late Collins was alive, and if they are now allowed to set it aside, the Respondent Samuel will not only be deprived of all subsistence, but the marriage settlement will be defeated, and innocent persons will suffer. Appellants ought not now to be admitted to avoid the will or their own deed and fine, and that against purchasers without notice. *Signed* Samuel Collins; *Countersigned* Charles Porter and Geo. Hutchins. *Endorsed* as brought in this day.

41. March 26. Newcomb v. Bonham.—Appeal of Thomas Newcomb and Dorothy his wife. Anthony Young, being seized in fee of the manor of Ambersham, in the County of Southampton, of about 200*l.* a year, borrowed 1,000*l.* of the Respondent Thomas Bonham, and, as security, conveyed the estate by lease and release to Bonham and his wife Alice, and took from them a re-demise of it for 99 years, with a covenant to reconvey it to him, on repayment of the loan with interest. Failing such payment in his lifetime, Young covenanted that his heirs should be barred from all redemption. Anthony dying soon after, and before he paid the 1,000*l.*, the Respondents administered and entered on his real estate, as absolute purchasers. The Appellant Dorothy, being heir at law to Young, and being advised that she had a right to redeem, the Appellants offered to pay the 1,000*l.* with interest, or so much thereof as the personal estate would not extend to satisfy, but the Respondents refused. Appellants then brought a Bill in Chancery, and the late Lord Chancellor Nottingham declared the conveyance to be only a security and not an absolute purchase, and decreed that on payment of the 1,000*l.* and interest, the Respondents should reconvey to Appellants. This decree was confirmed on a rehearing before the said Lord Chancellor, but was afterwards reversed, on a bill of review, by the late Lord Keeper North. Appellants contend that the conveyance was only in the nature of a mortgage, and that they have a right to redemption. Pray that the reversal may be set aside, and the original decree confirmed. *Signed* by Appellants; *Countersigned* Geo. Hutchins. L. J., XIV. 161. [The Appeal was heard on 1 May. *Mr. Serjeant*

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Hutchins (for Appellant) argued the question whether the heir of a mortgagor could redeem the mortgage. *Mr. Finch*, on the same side, urged that the same agreement that made it a mortgage, would keep it so. *Sir Ambrose Phillipps* and *Sir Francis Winnington* appeared for the Respondent, the latter stating that Mr. Bonham was not to receive any interest during the life. They agreed that if he did not redeem in his life, the equity foreclosed. Appellants' Counsel having replied, the *Lord Privy Seal* stated the case, when the House adjourned during pleasure to robe, the King having come. After the King had withdrawn, the debate was resumed on the question whether it was a mortgage or purchase, and the House dismissed the Appeal. MS. Min., 1 May, L. J., XIV. 198. For reports of case below see 1 *Ver-non* 7 and 2 *Ventris* 364.]

Annexed:—

- (a.) 4 April. Petition of Respondents for ten days' further time to answer, Thomas Bonham being afflicted with the gout, and being at Westmean in Hampshire, near 60 miles from London. L. J., XIV. 167.
- (b.) 13 April. Answer of Thomas Bonham and Alice his wife. The estate was not worth more than 90*l.* a year in lands, and 8*l.* a year for a Mill. Part of it, of the yearly value of 60*l.*, was settled in Anthony Young's life-time on Sarah Young, his mother, who is still living, but owing to the badness of the times and fall of rents, and the extraordinary charge of repairs, her share of the lands she holds in jointure is only worth 50*l.* a year, and the Respondents' part of the lands is let for a rent of only 40*l.* a year. Anthony Young being in want of money, and also desiring to make some provision for his sister the Respondent Alice Bonham (the Appellant Dorothy Newcomb, his niece, having moreover displeased him) agreed with the Respondents, in consideration of 1,000*l.* to discharge his debts, to convey the lands in possession and reversion to the Respondents and the heirs of the Respondent Thomas Bonham, and the same was accordingly done. This conveyance was not a mortgage, redeemable after Anthony's death. Pray that the Appeal may be dismissed. Signed Tho. Bonham; Countersigned Ambrose Phillipps. *Endorsed* as brought in this day.
- (c.) 13 Feb. 1694–5. Petition of Richard Hutchinson and Dorothy his wife. Dorothy is the Appellant, who had married Hutchinson after Newcomb's death. She was Anthony Young's niece. The Appeal was heard on 1st May 1689, when His Majesty came on a sudden to pass several Acts, and the Appeal was dismissed. Pray they may be admitted to redeem the premises, and that the Respondent may not take advantage by the sudden dismissal and forfeiture for breach of covenant before he had performed his part. L. J., XV. 491. *Endorsed* Rejected. [The Standing Order as to the reading of Petitions for a rehearing (*ib.* 492) was made on motion the following day. MS. Min. 14 Feb.]

42. March 27.—Prince George of Denmark Naturalisation Act.—Draft of an Act for exhibiting a Bill in this present Parliament for naturalising the most Noble Prince George of Denmark. [Read 1^a etc. and sent to the Commons this day; Royal Assent 3 April. L. J., XIV. 163, 165. 1 W. & M. c. 5, in Long Calendar. See also No. 47.]

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43. March 28. *Strode v. Rodney and others.*—Copy of Writ of Error and Transcript of Record, with Tenor of Judgment of this House, of 25 April, appended. [Writ of Error brought in this day. L. J., XIV. 165. This Cause and the following one (No. 44) were heard together on 25 April, when *Serjeant Thompson* and *Mr. Powys*, for the Plaintiff, on a preliminary point, argued that the Cause in Chancery was not in this cause. For the other side, *Mr. Whitelocke* denied this, and *Mr. Finch* said the action was for seizing Rodney as a traitor. Rodney's Case (Annex b) was read. Then the Judges gave their opinions. *L. Chief Justice*: Rodney brings an Action against Strode, with 1000*l.* damages. This is a Writ of Error, so the House has not the Equity before it, but only the Action. The point is Equity and Law. Is of opinion that there is no contempt. *Sir Robt. Athyns* is of opinion the House may proceed and that he has not committed any contempt by moving in Chancery. *Sir Edw. Nevill*, *Justice Powell*, and *Justice Gregory* of the same opinion. Then Counsel were called in again, and *Serjeant Thompson* and *Mr. Holles* cited precedents in favour of Plaintiff. *Mr. Solicitor*, for the Defendant, said the damages were very reasonable. If three men commit a battery, only one need be sued. In several cases, the jury may give several damages. Then *Mr. Whitelocke* and *Mr. Finch* followed on the same side. The *L. Privy Seal* then stated the case. The Judges to be heard. *L. Chief Justice* desires some time. He conceives two points. It is a special action brought by Rodney against Strode. Question whether the verdict in point of damages be a good verdict. If not, whether it be curable or cured by a *noli prosequi*. The Judgment by the jury is not good. No judgment could be given for 1,000*l.* to one and 50*l.* to the other two. That the *noli prosequi* has cured this thing, is the case now. He does not understand how it can cure it. *L. Chief Baron*: It is not denied but that the Judgment is illegal. The question is about the *noli prosequi*. This Case is not in any Case cited. This is all one trespass, all tried at the same time. He is of opinion with the *L. Chief Justice*. *Mr. Baron Nevill* doubts. *Mr. Justice Powell*: The verdict is not a good verdict, as has been granted on both sides. The *noli prosequi* has not cured the business, the foundation being vicious. *Mr. Justice Gregory*: The charge is, they are to assess damages. The Verdict is vicious. A *noli prosequi* does discharge this. After debate, the Judgment was affirmed. MS. Min. of date. L. J., XIV. 192.]

Annexed:—

- (a.) 5 April. Petition of Plaintiff that a day may be appointed for Defendants to join in Errors in the two suits brought against Petitioner and his bail Edmond Eyre [*alias* Edmond Eyre Adderley. See No. 44], and that all proceedings against them may be stayed, and the other side take copies of the Record. [Read this day. MS. Min. 5 April. No entry in L. J. On the back of the copy of the Transcript in *Adderley v. Rodney* (No. 44) is the following note in pencil, addressed to Mr. Rodney, "Sir, You must join issue on Monday or Tuesday at farthest, else we shall be petitioned against. Pray let me see you Monday morning before 9 at my chamber at Westminster, and pay my man 8*l.* or 10*l.*"]
- (b.) 25 April. Case of Defendants, consisting of copy of Petition of Plaintiff to the Lords Commissioners for the custody of the Great Seal, praying for a rehearing, the Defendants having procured Petitioner's Roll to be dismissed by surprise; with certificate of Jo. Hawles and Jo. Keen that Petitioner has good cause

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to pray as above. Then follows an Order of A. Keck and W. Rawlinson, Commissioners of the Great Seal, dated 16 March, appointing a day for hearing, on the Petitioner depositing five marks costs; and then comes a statement of the Case. The Bill in Chancery was to set aside a verdict against Strode for 1,000*l.* damages, and to obtain a new trial; but it was dismissed. The other Defendants, Harlowin and others, were Rodney's witnesses. They were charged with a confederacy and combination against Strode. Their Demurrer was allowed. Strode never served this Petition till the 23 April, after he had been served with notice of the hearing appointed in the House of Lords. *Endorsed* Mr. Rodney's Case. Strode's Petition to the Chancery. Read this day. [MS. Min. No entry in L. J.]

44. March 28. *Adderley v. Rodney*.—Copy of Writ of Error and Transcript of Record, with Tenor of Judgment of this House, of 25 April, appended. [Writ of Error brought in this day. L. J., XIV. 165. See Notes to No. 43 and Annex (a) thereto.]

45. March 28. *Harvey v. L. Holles*.—Petition of Appeal of John Harvey, Esq., and Isabella, his wife, and their Trustees. Isabella was the daughter and heiress of Sir Robert Carr, Bart., the younger, deceased, and her Estate was, by a decree of L. Chancellor Jeffreys, of 1686, charged with a sum of 10,360*l.* 9*s.*, being the marriage portion of her aunt on her marriage with Francis, L. Holles, amounting to 6,000*l.*, with the interest to 1 March 1678, and interest for principal and interest from that time, amounting altogether to above 16,000*l.*; and the estate was to be sold to satisfy the said charge. The sum of 10,360*l.* 9*s.* had been decreed by a decree of L. Chancellor Nottingham in 1682. Isabella's father, by his will, charged his Estate with the payment of his debts. Payment of the marriage portion should not have been decreed, as the aunt had died without issue, and her husband had not performed the marriage agreement on his part. Under Lord Nottingham's Decree, Respondent was given the lands upon which the portion was secured, and might have recovered the portion besides, at law. One Decree charges interest on the capital alone, the other on both capital and interest. The portion was not a debt included in Sir Robert's Will. Pray that the Decrees may be reversed and that L. Holles may be pleased to answer. *Signed* John and Isabella Harvey; *Countersigned* Chas. Porter and Geo. Hutchins. L. J., XIV. 164. [The Appeal was heard on 8 May. *Mr. Hutchins*, for the Appellant, said that in 1661 a marriage was proposed to Sir Robert Carr's daughter. 500*l.* a year was to be settled. The 6,000*l.* was lost. *Sir William Williams* and *Sir Francis Winnington* appeared for the Respondent. Upon *Mr. Finch's* offering to reply, not having spoken before in the Cause, the order of 5 Jan. 1685 for two Counsel (L. J., XIII. 735) was read. Question: Whether to allow fresh Counsel to reply in this Cause be consistent with the order now read? Question: Whether this question shall be now put? Resolved in the negative. Counsel being then called in again, *Mr. Serjeant Hutchins* was told he might reply. After hearing him, the House ordered to give Judgment the next day.—On the 9th the Lord Privy Seal reported the case, and after debate, *Mr. Baron Nevill* was heard as to the articles of agreement. Question: Whether, if by the will of Sir Robert Carr, the will amount to a further security, if more interest is due than the land is worth, the will should not make it good. He says it lies in Equity before their Lordships. He speaks as to a further

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security. If the first is fully performed, then the last is void. The House then gave judgment as in L. J., XIV. 206. (MS. Min. 8 and 9 May.)]

Annexed:—

(a.) 15 April. Answer of Francis, Lord Holles. On Respondent's marriage in August 1661 with Lucy, daughter of Sir Robert Carr, it was agreed by articles in writing that 6,000*l.* should be paid to Respondent on 1 Nov. 1662 as his wife's portion, together with 6 p.c. interest until paid, and that for further security, a fine should be levied by Sir Robert and others, of certain lands in Lincolnshire, the use being to Edward Coke and Miles Fleetwood for 500 years, upon trust to secure the said portion and interest. Sir Robert paid the interest on the 6,000*l.* for some years, and having procured in 1664 an Act for settling a great part of his estate, took care to have a clause inserted for vesting the lands comprised in the fine in Sir Richard Temple and others, in trust by sale or otherwise to pay the portion and interest. Lady Holles died in September 1667, and after the death of her children and Sir Robert Carr, the elder, the younger Sir Robert Carr refused or neglected to pay the portion and interest, or to levy the fine agreed on. Respondent insists on the decree, as just, except that no costs were decreed to Respondent, who has spent nearly 3,000*l.* in the above suits. Prays that the Appeal may be dismissed. *Endorsed* as brought in this day. [MS. Min. April 13, 15.]

46. April 3. Writ of Summons. (Rp. Salisbury.)—Writ of Summons, dated this day, to Gilbert (Burnet), Bp. Sarum. [Took the Oaths this day. L. J., XIV. 165.]

47. April 3. Prince George of Denmark Naturalisation Act.—Amended draft of an Act for the Naturalisation of the Most Noble Prince George of Denmark, and settling his precedence. The original preamble runs as follows:—"Whereas the [Royal line as well as the virtues of the Most Noble Prince George of Denmark did justly entitle him to the marriage of Her Royal Highness the Princess Anne, and that his Highness has] ever since," etc. The Bill originally ended with this clause:—"And be it further enacted by the authority aforesaid, That the Robes of the said Prince, both in and out of Parliament, shall be distinguished from the Robes of all other Peers of this realm by the addition of two bars of 'Ermine extraordinary.'"—[Read 1^a, 2^a, and committed this day. L. J., XIV. 166.* The Committee met this day, and after amending the Bill by omitting the words first included above in square brackets, and substituting the words in the Act, *Mr. King*, the Herald, was called in, and being asked whether the Prince, as an English Duke, was to have different robes from another Duke, he replied in the negative. The final clause, as above, was then omitted. (Com. Book 3 April.) The Bill received the Royal Assent on 9 April. L. J., XIV. 173. 1 W. & M. c. 9 in Long Calendar.]

48. April 3. Papists (Annulment of Gifts) Bill.—Draft of an Act to annul and make void all gifts and grants made to Papists, or to any in trust to the use of Papists. Whereas it is provided by a Statute made in the 25th year of the reign of King Charles II., intituled An Act to prevent dangers which may happen from Popish Recusants, That every

* This Bill was first brought in on 26 March, but withdrawn, by leave, after a first reading. (MS. Min. 26 March. No entry in L. J.) See No. 42.

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person who shall bear any office, civil or military, or shall receive any pay, salary, fee or wages, by reason of any Patent or Grant from his Majesty, or shall have command or place of trust from or under his Majesty, or from any of his Majesty's predecessors, shall receive the Sacrament of the Lord's Supper, according to the usage of the Church of England, and take the Oaths of Allegiance and Supremacy, and subscribe the Test, or in default thereof to suffer such pains and disabilities, as by the aforesaid Act are appointed and directed; yet nevertheless since the making of the said Act, to elude, frustrate, and make void the good ends and purposes of the same, several gifts and grants have been made in trust to the use of Papists and other persons, who by law ought not to hold the said gifts or grants, or to receive any profit or advantage by reason of such gifts or grants; for redress of which grievance, and to prevent the like in time to come, Be it enacted by, etc. That all such grants as aforesaid be null and void, and they are hereby declared to be null and void to all intents and purposes whatsoever. And be it further enacted by the authority aforesaid That all such persons as already have accepted any such gifts or grants in trust as aforesaid, and shall not discover or make known the same to some one of the Lords of their Majesties' Most Hon^{ble} Privy Council, or to their Majesties' Attorney General or Solicitor General on or before the 1st day of June next ensuing, shall incur all the pains and penalties mentioned in the aforesaid Act made the 25th year of Charles II. And be it further enacted by the authority aforesaid, That all gifts and grants of lands, annuities, forests, or chases, made to Papists or other persons since the year of our Lord 1660, who shall not on or before the first day of July next ensuing, take the Oaths mentioned in a statute made this present Parliament, intituled An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament, and subscribe the Declaration mentioned in a statute made the 30th year of the reign of Charles II., intituled An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament, before the Lord Chief Justice of England, or the Chancellor of their Majesties' Court of Exchequer, who are hereby empowered to receive the said oaths and subscriptions, shall be null and void; and they are hereby declared to be null and void to all intents and purposes whatsoever. [Read 1^a this day: dropped in C. W. H. on the 13th. L. J., XIV. 165, 173. The proceedings in Committee, which were interrupted by the message from the Commons with an Address, are thus recorded:—D. Bolton in the Chair. The Bill read. Title and preamble read and postponed. The first enacting clause read. After long debate, House resumed. (MS. Min. 13 April.) No further proceedings.]

49. April 4. *Oates v. The King*.—Writ of Error, &c., brought in this day, to reverse a Judgment against Titus Oates for his perjury in having sworn that, at the Consult of Papists at the Whitehorse Tavern in 1678, he went about from room to room getting signatures to a resolution for putting the King to death. Tenor of Judgment of this House on 31 May appended. L. J., XIV. 167, 228. *Parchment Collection*. See also No. 54, and *Howell's State Trials*, X. 1079.

50. April 4. *Oates v. The King*.—Writ of Error, &c., brought in this day, to reverse a Judgment against Titus Oates for his perjury in having sworn that Ireland, the Jesuit, was in London on a certain day in 1678, and that he took his leave of Oates at his room in Russell Street. Tenor of Judgment of this House on 31 May appended. L. J.,

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XIV. 167, 228. *Parchment Collection*. See also No. 54, and *Howell's State Trials*, X. 1227.

51. April 4. *Oates v. Duke of York*.—Copy of Writ of Error, &c., brought in this day, to reverse a Judgment against Titus Oates for *scandalum magnatum* in having said in December 1683 "This letter cost me ninepence, and might have been brought me for a penny. I know nobody is the better for it but that traitor James Duke of York." Tenor of Judgment of this House on 1st June, reversing Judgment below, appended. L. J., XIV. 167, 230. See also No. 54, and *Howell's State Trials*, X. 126.

52. April 5. *Savery's Bill*.—Draft of an Act to enable Isaac Savery, of the City of Exeter, Gent., to take upon him the surname of Searle or Serle. Identical with the amended Bill of 1685 (See 11th Report, Appendix, Part II., No. 457.) [Read 1^a this day. L. J., XIV. 168. An entry in MS. Min. of 9 April, but not in L. J., states that the Bill was read 3^a on that day, and that it was ordered that the parties have notice. Counsel was heard on the Bill on 22 April. *Sir George Treby* appeared for the Bill, and *Sir Charles Porter* and *Mr. Row* opposed it. The *Lord Privy Seal* having stated the case, the House took the opinions of the Judges in the case, as to the power of the woman to dispose of the lands and bar the remainder. *L. C. Justice Holt* took the case to be whether marriage can bar by a common recovery. If she suffered a common recovery, it did cut off all the remainder. Cited *L. C. Justice Hale's* opinion in *Hudson's* case. And if she has suffered a common recovery, it is cut off. Thinks if this Act pass, she does fulfil the will of the testator. *L. C. Baron*: Of the same opinion in point of law, and that she may cut off the entail. *Sir W. Dolben*: Of opinion that if the Bill pass, the opposer has no ill done him. *Sir Edward Nevill*: She has taken the rules of law, and cut off the entail. He leaves it to their Lordships. *Mr. Justice Powell* heard as to alienation. *Sir William Gregory* of the same opinion with the *L. C. Justice*, and that the remainder is barred by suffering a common recovery. Then, on question whether the Bill be read 3^a, resolved in the negative. MS. Min. 22 April. L. J., XIV. 187.]

53. April 8. *Savery's Bill*.—Lords' Engrossment of preceding. *Parchment Collection*. [Ordered to be engrossed this day. L. J., XIV. 170.]

54. April 9. *Oates v. The King*, *Oates v. D. York*.—Petition of Titus Oates, Clerk. States that three judgments against Petitioner in the King's Bench, viz^t, two upon indictments for perjury, and the other on an action of *Scandalum Magnatum*, at the suit of James, Duke of York, are removed by Writs of Error, and now lie before their Lordships. Petitioner has assigned errors, and prays for a short day for hearing. L. J., XIV. 172. [These causes were first heard on 26 April. *Serjeant Lovell*, for Oates, opened the cause upon the indictment upon Pickering, etc. The perjury was this, that he was not at the White Horse Tavern, and that he did not carry any resolution to be signed by them; which two particulars are no perjury, be they true or false. He was sentenced to be whipt. *Serjeant Thompson* speaks as to the perjury upon the other Writ of Error; upon the perjury for swearing that William Ireland was in town in September 1678. Upon this judgment the Court of King's Bench did devest him. Never was there such a judgment. *Mr. Weldon* speaks as to the degradation. The

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fine and imprisonment is contrary to law. Coke says it is the destruction of a man. *Serjeant Thompson* speaks to the Duke of York; that the words are no positive affirmance. An action grounded upon the Statute of *Scandulum Magnatum*. They have given a judgment that the party should be *in misericordiâ*. They have given the judgment the same day, which ought not to be done. *Mr. Weldon* speaks on the same side. The Record says he did not appear. The *L. Privy Seal* then stated the case, and Counsel for Oates, being re-called, were told to put in writing the errors they insisted on, and give the writing to the L. Chief Justice. (L. J., XIV. 193. MS. Min. 26 April.) Then written exceptions (Annexes (a) below) were put in and read the next day. (L. J., XIV. 194. MS. Min. 27 April.)—On 17 May the Judges, *Sir R. Holloway* and *Sir F. Withens*, attended at the Bar, pursuant to summons, to give their reasons for their judgment against Oates; and being called on by the L. Privy Seal, *Sir Francis Withens* said: In obedience to your Lordships' order, I wait on you. I need not put the case. Dr. Oates was indicted upon two several indictments for perjury. He was found guilty. It is the highest perjury—five persons condemned. It was without precedent; there never was a like case. I considered the punishments at Common Law. Perjuries in Coke punished by death; cutting out tongue in Edward the Confessor's time, death at the Common Law. Since these punishments had not been lately, he has looked in books, and cites precedents. Bracton, Book iii. c. 6,* speaks of imprisonment for a time or life, beating, and whippings. He took as much care as he could, that he did not err. In Cary's case, fined 100*l.* and imprisoned during life. I considered the law of God in the case of Nabal, who lost his life by a false oath. Upon these grounds, and because five persons lost their lives, it went with me to make the punishment near the offence. The Jury were sufficient men. *Sir R. Holloway*: He considered the Common law, and, there being no rule, he thought it desired in the judges to give the judgment as to the crime. If any Court out of Parliament has power, the King's Bench has. The greatness of the offence was the ground of the great punishment. He submits all to the judgment [of the House]. The *L. Privy Seal*: Were the perjuries fully proved, and were they material points in the cause? *Sir F. Withens*: If you consider the circumstance how to prove perjury. He instances in a robbery, if a man prove himself in another place. The second perjury he instances is in the Consult in August. They concluded to kill the King. Says Oates, You were there; I met you between the 8th and 12th of August; and he proves he was not in town. Impossible to discover a perjury but by circumstances. He might be pilloried once a year. *Question*: What are the precedents of a clergy? *Sir F. Withens*: There is no distinguishing in our law. I had no spite to the person, but to my own conscience. *Sir R. Holloway*: He does not take upon him to justify the reiterated punishments; but there are instances of it in the law. But he submits all to the House. *J. C. Justice Holt*: They have given your Lordships an account of the nature of the case. They are heinous crimes—perjury, whereby men did lose their lives. Whether this punishment be according to law, I beg a little time to consider, it being a matter of great importance. The Judges were then ordered to give their opinions on Friday next, when Holloway and Withens were ordered to attend again. (MS.

* Fol. 105—"De generibus pœnarum quibus homines afficiuntur propter eorum iniquitates."

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Min. 17 May. L. J., XIV. 213.)—The next proceedings took place on 25 May, when the House being moved upon a Printed Paper of Oates', he was called to the bar, and owned to it. After debate he was called in again, and the title was read to him, with the words "and Commons, in Parliament assembled" there, and in the last clause "and your Honours of the House of Commons." Your business, he is told, is here. The Judges are here to give their opinion. You direct it to the House of Commons. *Answer*: He is going to put a Bill into the House of Commons. As to the Petition, it is only to their Lordships. He intended no affront. He submits to the House of Lords, only to the House of Commons as to a Bill. He did not question the just judgment of this House; but that all the world might see it, he thought of a Bill.—The second paragraph was then read. *Question*: The Lords require to know whom you mean. *Answer*: I beg your pardon for that. They that think themselves aggrieved will easily know it. The Journal will let you know, if searched. The paragraphs were then read, concerning the Duke of York, the witnesses at St. Omer, and the Bishop of St. Asaph. This their Lordships think reflects. *Answer*: There was no design in it. He produced his letters of ordination in Court. Asked if he could explain, or no, what he meant by "persons." *Answer*: When I am in a condition to justify what I say against any man, I will name persons and names. A *Scandalum Magnatum* lies against me, if a peer of this House. Oates then withdrew, and the Paper was read, after the question put as in L. J., XIV. 219. Then, after debate, a Printed Petition of Oates (*see* Annex (b) below) was offered to be read, and being called in at the Bar, he was asked if he owned that paper. He says "Yes, I do," and withdraws. Then the Petition was read entitled "To the Lords Spiritual and Temporal, and to the Hon^{ble} the Knights, Citizens, and Burgesses of this present Parliament." Then a Petition of his was read, which was read the 11 March 1688 (*see* No. 31.); and after debate the previous question was carried by 29 to 18, E. Rochester and L. Cornwallis being the respective Tellers. Then the main question was put, and carried, declaring the paper to be a breach of privilege. The Judges being asked whether he be committed or not, *L. C. Justice Holt* replied: So long as this judgment in the Record stands unreversed, he stands committed. *L. C. Justice [Polluxfen]* C. P. If he be a prisoner in the King's Bench, you may charge him there. If he is at large, you may do as you please. The rest as in L. J., XIV. 219–221. (MS. Min. 25 May.)—On the 31st, the Judges were heard as to Oates' Writs of Error. *L. C. Justice*: As to the perjury, there are errors sufficient to reverse the judgment. 1. Devested. 2. Whipt. 3. Imprisoned during life:—all these errors sufficient to reverse the judgment. The divesting belongs not to that Court. Fitz. Tit. 633—a clergyman that would not plead. He quotes this [to show] that the law takes notice of it, and the temporal [Court] has erred. 2. Whipt. He thinks the court cannot give judgment to have him whipt. It is to be taken to be granted he was guilty; but whipping could not be in this case, It never was a judgment by the Common law, except in Petty Sacr[ilege]. 3. Pillory and Tumbrel. The Tumbrel is for common bawds. As for perpetual imprisonment, for misprision of treason he is to be perpetually in prison. It is a statute law. If any one strikes sitting any court. In no other case as he knows of. 37 Q. Eliz. 405,* Peter Cary's case. I take this book not to be law. 14 Car. I. Croke, IV. p. 503, Harris[on] was convicted. The

* The reference is to Croke's Reports, I., p. 405.

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precedents were searched, and 'twas held they could not imprison during life. In the Star Chamber such judgments for perjuries and forgeies were often done, and burning noses, letter in faces, &c. But less are not to be taken notice of. One, for counterfeiting a farthing, was committed to Bridewell. The King's Bench never did this. The records have been searched, and no [precedent] can be found. 5 Eliz. ch. 9.*—*L. C. Justice Pollexfen*: Concurs with his brother in all the three arguments. There is no ground for any such judgment, nor any practice for it but the Star Chamber, and this was the ground that was taken away, and it ought to be reversed. *L. Chief Baron Atkyns*: Concurs with all that has been said. The Court of King's Bench had nothing to do with it. Bracton instances a clergyman.† The King cannot confer orders. The judgment, being void as to the divesting, is void in every part; and the whipping and pillory make it void. Unreasonable whipping was not allowed amongst the Romans. This was worse than death; it was intended, I presume, for his death. There is precedent amongst the Romans in Nero; this was following them. It is inhuman, unjust. Even a slave desires to die speedily. Augustus, being invited to sup with Pollio, set a wretch free whom Pollio had ordered to be put into a pond of lampreys, to be grawed to death, for breaking some glasses. *Sir Edward Nevill*: To the first part of the judgment—to be divested—this is such as the temporal courts cannot give. If the Ecclesiastical Courts impose fine and imprisonment, it is therefore void. This being erroneous, the whole judgment falls. *Gregory, J.*: Agrees in all the three points, and gives his reasons for it. Divesting him is the very sentence of the Ecclesiastical Court. The laws of England do not suffer the judges to invent punishments. He conceives that in all three points, they are erroneous. *Lechmere, B.*: Agrees that the judgment is erroneous in all the points. It is Titus Oates, Clericus. He takes divestment to be an invasion, and it had no authority. They did it with their eyes open; they knew him to be a clergyman. As for the whipping, it is not only erroneous, but exorbitant, and never practised before in the lower part of Westminster Hall. From all history there are no such instances. I think his whipping was with design to have killed him. 30 May 1621. No gentleman was to be whipt. This was on the book, Floud's case,‡ [The preamble to the Act of] 5 Q. [Eliz. c. 9] says that persons are encouraged to commit perjury, because the punishment is so little. Titus Oates is not indicted upon the statute; but a common law for imprisonment during life, the law has no such judgment, to bury a man alive; it is erroneous. *Rokeby, J.*: Ours is a matter of law. Three things are mentioned as errors; in all three he agrees. They have no power at all of degradation, and the judgment is erroneous. Whipping is barbarous. It is a judgment not by common law; only upon the statute. As to perpetual imprisonment, there is no authority to inflict it. It is erroneous. *Eyre, J.*: Is of the same opinion with the rest of the judges. A temporal court had nothing to do to degrade. As to the whipping, it is plain it is a villainous judgment, let Bracton say what he please. St. Paul redeemed himself by saying he was a free citizen. A clerk is not to be burnt in the hand. As to perpetual imprisonment, it is very plain it cannot be inflicted but

* An Act for the punishment of such persons as shall procure or commit any wilful perjury.

† The reference is apparently to Bracton, Book iii. c. 9—De clerico imprisonato, &c.

‡ See L. J., III. 134, 142, 148.

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where lands are forfeited during life. Conceives the judgment to be erroneous. *Turton, B.*: Agrees with what has been said as to the three points. As to the devesting, our law has nothing to do with it. Whipping—that I cannot find in our books, and it is therefore illegal. Perpetual imprisonment upon that account is very illegal. The several sorts of punishment are for the same offence. It is inhuman and barbarous. If a clerk be convict, he shall not be burnt in the hand. He is fined, and yet continued a prisoner during life. In our law, when a fine is paid, the person ought to be discharged, and yet he stands committed. The judgments are erroneous.—Then, after debate upon the business; *Question*: Whether this reverses the jury's verdict? *L. C. Justice Holt*: The reversing this judgment sets aside the conviction, and he is the same as if there is no conviction upon him. Then a proviso in the statute of 5 Eliz. was read, and after a debate, which was interrupted by a message from the Commons about the Poll Bill, on question whether to reverse the two judgments against Oates in relation to his two perjuries, *Question*: Whether this question shall be now put? *Resolved* in the affirmative. Contents 36, Not-Contents 21. Tellers E. Bridgewater, E. Aylesbury. Then the main question was put and resolved in the negative. Contents 23, Not-Contents 35. Tellers as before. (MS. Min. 31 May, L. J., XIV. 228.)—On 1st June part of the Record was read, and Oates' Case upon the *Scandalum Magnatum* (MS. Min.). See also Nos. 49, 50, 51.]

Annexed:—

(a.) 27 April. Exceptions read this day (L. J., XIV. 194: See notes to preceding paper) to the Writs of Error, on behalf of Oates. *Three papers, viz*:—

(a¹.) “*Dux Ebor. v. Oates. Super Scandalum Magnatum.* - 1. That there are several words laid to be spoken at several times, and entire damages given; and the last in the Declaration are thus laid. The Defendant *malitiose, etc. dixit et publicavit, Quod idem Dux Ebor. esset Proditor versus Dominum nostrum Regem, Anglicè*—a Traitor. This is no direct and positive affirmance that he is a traitor, for *esset*, with the sign *utinam*, is the optative mood, and then 'tis wishing he were a traitor; if in the potential mood, 'tis might, would, should, or ought to be a traitor, which is not actionable, and being entire damages all is void. 2. Exception. The action is not concluded *contra formam Statuti*, being founded upon the Statute, as it ought to be, which is substance, and the judgment is by default. 3. Exception. That 'tis *Et prædictus Titus Oates licet solempniter exactus non ven. nec aliquid dic.*, etc. He ought either to appear in proper person, or by attorney, and so are all the entries. He cannot be said to be present in Court, though actually in *custodia Marrescalli Marrescalliæ*, for that's but the prison of the Court. And this entry is so, for 'tis *licet solempniter exactus non ven.*, etc. So no appearance in Court to the action. And all the entries are upon an appearance either by Attorney or *in propria personâ*. The Action is *de placito transgressionis et contemptus*, and the judgment is *quod sit in misericordiâ*; whereas it ought to be *quod capiatur* (not helped by any statute of Jeofaile in this case); for wheresoever there is a contempt to the King, there is a fine, and ought to be a *capiatur*.”

(a².) “*Dominus Rex v. Oates. Idem v. Eundem.* In two indictments for perjury. To both the judgments in the perjuries the errors assigned are, That the judgments are arbitrary and excessive,

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severe, cruel, and inhuman and horrible, and such as by the law of England in this or any other case upon an indictment against a clergyman, or any other freeman of England, ought not to be given, nor ever heretofore was given. The particulars of the judgment. 1. First, that the said Titus Oates shall be de-vested, by one of the Marshal's servants of this Court, of all his canonical and sacerdotal habits, and so shall continue de-vested, during life, which is a judgment pertaining to the Bishops, and an Ecclesiastical censure not warranted by the Common or Statute law of this Kingdom, for the Judges to inflict in any case whatsoever. 2. Exception. That he shall be whipped by the Common Executioner, in the one case from Aldgate to Newgate, in the other case from Newgate to Tyburn, which is a cruel, severe, and a villainous judgment, not to be inflicted for perjury by the common or statute law of this Kingdom, without precedent and contrary to Magna Charta, and against the liberty of a freeman of this Kingdom. 3. Exception. That he should be set upon the Pillory once every year upon one of the judgments for his life, and four times in the year in the judgment upon the other indictment during life; which is arbitrary, illegal, and contrary to Magna Charta, without precedent or any authority whatsoever. 4. Exception. Fined 1,000 marks in each judgment, and committed in execution for the fines aforesaid; which fines are excessive, twice as much as the Defendant was worth, and therefore against Magna Charta, by which all fines ought to be with a *salvo contentimento*. 5. Exception. That he shall be imprisoned during life, *in salvâ et arctâ custodiâ*, which is contrary to law and without precedent, for perpetual imprisonment was never inflicted for any such offence as in the indictments is alleged. And being committed in execution for the fine, supposing he could have paid that fine, he ought to have been discharged from his commitment in execution for the fine, which this last part of the judgment has perpetually disabled him to have the benefit of."

(a³). "These indicted for High Treason—
 17 Oct. 36 Car. { Assembled }
 II. *Quia* { Consulted } to { Ireland }
 { Agreed } { Introduce Popery. }
 { Kill the King. }
 { Provide weapons. }
 { Lie in wait. }

Oates' evidence testifies, 1. That there was a treasonable Consult of Jesuits at the White Horse Tavern in the Strand, 24 Ap. '78. 2. That he was present. 3. That the Jesuits divided into several companies. 4. They came to a resolution to murder the King. 5. That he carried the resolution from room to room, and saw it signed by them. *Ubi re verâ*: He was not present at any consult of Jesuits then and there; nor carried any resolution to kill the King to be signed. Judgment: To be de-vested by Marshal's man *de omnibus vestibus suis canonicis et sacerdotalibus*. 2. Whipped from Aldgate to Newgate. 3. Pillory three times a year during life. 4. To pay 1,000 marks. 5. *Salva et arcta custodia durante vitâ*.—Error brought: *In nullo est erratum* pleaded. Exceptions: 1. By the law no perjury can be committed in a matter not pertinent or material to the issue or matter in question, neither upon the Statute nor at

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the Common Law. If not pertinent, 'tis *Sacramentum fatuum*, in which no perjury can be assigned.—That they are immaterial, (1) for that the indictment doth not charge the traitors with any consults of Jesuits ; (2) nor with any Consult at the White Horse Tavern in the Strand upon the 24th of April 1678 ; (3) nor that Mr. Oates was present at any Consult at that time and place ; (4) nor that he carried any resolution to be signed. So that by these particulars, or true or false, 'tis all one to the prisoner, the same being not alleged in the indictment, and so out of the issue joined upon it.—As to the second perjury assigned, the evidence is that he saw a Consult signed ; and the breach assigned is *ubi re verâ* he did not carry it to be signed ; which makes no affirmative and negative, and so no issue.—But admitting the indictment good, yet the Judgment is erroneous ; Firstly, to be deposed by the Marshal's man, *de omnibus vestibus suis canonicis et sacerdotalibus* is, (1) It is a sentence ecclesiastical only and not in the power of a temporal Court ; (2) It must be executed by an ecclesiastical officer only. Secondly, to be whipped from Aldgate to Newgate, and stand in the pillory three times a year during his life, which is (1) a villainous judgment and horrible, inhuman barbarity, and without precedent. (2) Clergymen are persons privileged from offices, leets, &c. and arrests (if beneficed), nor to be burnt in the hand, having clergy. Thirdly : Fined 1,000 marks, which is excessive and outrageous, beyond his ability to pay, against law, and arbitrary, and yet not to be released upon payment. Fourthly : To be kept *in salvâ et arctâ custodiâ* during his life is without precedent in such cases. Imprisonment for life is never but where lands are awarded forfeited during life.—As to the second indictment. The indictment the same. Evidence given by Mr. Oates, (1) That Ireland was in town the first or second of September, 1678, *ubi re verâ* he was not ; (2) That Ireland took his leave of Mr. Oates and others at his Chamber in Russell Street, between the 8th and 12th of August, 1678, *ubi re vera* he did not do so. First Exception : These falsities thus assigned are impertinent, etc., *ut supra*, and no perjury. Second Exception : The judgment in this is the same with the other, and illegal for the same reasons as before etc.”

(b.) 25 May, 1689. Printed Petition of Oates, as follows : “ To the Right Honourable The Lords Spiritual and Temporal, and to the Honourable the Knights, Citizens, and Burgesses in this present Parliament assembled, The Humble petition of Titus Oates, D.D.

Most humbly sheweth,

That your Petitioner in the year 1678 discovered a horrid Popish conspiracy for the destruction of the late King Charles the Second, his present Majesty, and the Protestant Religion within these Kingdoms, and proved it so fully, that several Parliaments and Courts of Justice, before whom he gave his Testimony, declared their belief of it by public votes, and the condemnation of several of the Conspirators. For which reason, and because your Petitioner would not be terrified by their threats, nor seduced by their promises of great rewards (with both which temptations they often assaulted him), to desist in his discovery, the Jesuits and Papists pursued him with an implacable malice, and endeavoured to take away his fame and life, by suborning witnesses to accuse him of capital crimes ; but being defeated in

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that *villainous* attempt, they *first* procured King Charles the Second to withdraw that protection and subsistence his Majesty had, at the request of several Parliaments, allowed to your Petitioner and then instigated his Royal Highness the Duke of York to prosecute your Petitioner in an action of *scandalum magnatum*, for speaking this notorious truth, viz., That *the said Duke of York was reconciled to the Church of Rome*; and that *It is High Treason to be so reconciled*; wherein a verdict and judgment for one hundred thousand pounds damages were obtained against your Petitioner, and your Petitioner was committed to the King's Bench prison.

After this, the same Popish party obtained leave from King Charles the Second, to prefer two several indictments against your Petitioner, for two pretended perjuries in his evidence concerning the said conspiracy, which they brought on to trial in the reign of King James the Second, and your Petitioner was upon the evidence of those very witnesses, who had confronted him in three former trials, and were disbelieved, and through the partial behaviour of Chief Justice Jeffreys, in *brow-beating his witnesses, and misleading the juries*, convicted of the said pretended perjuries, and received this inhumane and unparalleled sentence following, viz.: To pay two thousand marks to the King: To be devested of his canonical habit: To be brought into Westminster Hall with a paper upon his head, with this inscription, 'Titus Oates convicted upon full evidence of two horrid perjuries': To stand in and upon the pillory two several days, for the space of an hour: To be whipped by the common hangman, from Aldgate to Newgate on Wednesday, and to be whipped again on the Friday following from Newgate to Tyburn: To stand in and upon the pillory five times in every year of his life: And to remain a prisoner during his life. Which sentence being intended, as your Petitioner hath just reason to believe, to murder him, was accordingly executed with all the circumstances of barbarity, he having suffered some thousands of stripes, whereby he was put to unspeakable tortures, and lay ten weeks under the surgeon's hands. Neither did their cruelty cease here, but because your Petitioner, by God's mercy miraculously supporting him, (and the extraordinary skill of a judicious chirurgeon) outlived that bloody usage, some of them afterwards got into your Petitioner's chamber whilst he was weak in bed, and attempted to pull off the plaisters applied to cure his back, and threatened to destroy him. And that nothing within their power or malice might be wanting to complete your Petitioner's misery, they procured him to be loaded with irons of excessive weight for a whole year, without any intermission, even when his legs were swollen with the gout, and to be shut up in the dungeon, or hole, of the prison, whereby he became impaired in his limbs, and contracted convulsion fits, and other distempers, to the great hazard of his life. All which illegal proceedings and barbarous inhumanities your Petitioner humbly conceives were not only intended as a revenge upon him, but likewise to cast a reproach upon the wisdom and honour of four successive Parliaments who had given him credit, and upon the public justice of the nation. And your Petitioner humbly hopes, that since the Papists themselves have verified and confirmed his evidence by their late open and avowed violations of our religion, laws and liberties, the Honourable House will vindicate the proceedings of former

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Parliaments, and discharge your Petitioner from those arbitrary and scandalous judgments, and the unjust imprisonment he lies under. Your Petitioner doth therefore most humbly beseech your Lordships and Honours to take his deplorable case into your generous and tender consideration, and to give him such redress therein as to your Lordships and your Honours' great wisdom, justice and goodness shall seem meet: And your Petitioner shall ever pray, &c."—London, Printed by J. D. and are to be sold by Richard Janeway, 1689. *Endorsed.* "This Paper was owned by Oates, and read 25 May 1689." Most of this Petition is printed in C. J., X. 145.

55. April 15. Writ of Summons (E. Portland).—Writ of Summons, dated 13 April, to William, Earl of Portland, introduced this day. L. J., XIV. 175.

56. April 15. Writ of Summons (L. Cholmondeley).—Writ of Summons, dated 13 April, to Hugh Cholmondley de Namptwich, Chr, introduced this day. L. J., XIV. 175.

57. April 15. Writ of Summons (V. Sydney de Sheppy).—Writ of Summons, dated 13 April, to Henry, Viscount Sydney de Sheppey, introduced this day. L. J., XIV. 175.

58. April 15. *Bradshaw v. Northend*.—Petition and Appeal of Sir James Bradshaw, Knt., Richard Northend, and Nathaniel Northend. The late John Northend, on the marriage of his eldest son John with Ann Hardy, sold his lands in Huggate, Yorkshire, of the yearly value of 16*l.*, to be his son's portion, and settled on his younger sons, the Petitioners Richard and Nathaniel, his lands called Hunslee in the same county, of the yearly value of 50*l.*, in consideration of their paying his debts. The son John dying in his father's lifetime, leaving a son Christopher, Petitioners, his brothers, having paid 300*l.* debts for their father, took possession of the Hunslee lands under the deed, and mortgaged them to the Petitioner Bradshaw for that sum. Christopher then claimed the Hunslee lands under pretence of a marriage agreement which was never completed, and L. Chancellor Jeffreys in 1687 ordered Richard and Nathaniel to deliver possession to him and account for all profits since the death of John, the grandfather, and Sir James, who was not in the cause, has been served with an injunction to the same effect. Appeals from this Decree. *Signed* James Bradshaw; *Countersigned* Ambr. Phillippis and Thos. Filmer. L. J., XIV. 175. [At the hearing *Serjeant Thompson* and *Sir W. Williams* appeared for Appellants, and *Sir Charles Porter* and *Mr. Ward* for Respondents. *ib.* 226. MS. Min. 30 May.]

Annexed:—

(a.) 6 May. Answer of Christopher Northend, Gent. On John's marriage with Ann Hardy, his father by deed dated 1658, as consideration for her marriage portion, settled the lands in Hundsley, of the yearly value of 44*l.*, on trustees to the use of himself during life, and after that to the said John, Respondent's father. John dying during his father's lifetime, the latter tried to take advantage thereof, and, as is pretended, made some voluntary settlement of the lands on Respondent's uncles, Richard and Nathaniel, who possessed them after his death and during Respondent's infancy. Respondent's deed, though it wanted legal formalities, is good in equity. Respondent knows of no conveyance or mortgage made by his uncles

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to Sir James Bradshaw, nor was such disclosed in Chancery, and if it exists, it was fraudulent. Appellants have received over 900*l.* from the estate, for which by the Decree they are accountable. Respondent does not believe Sir James was ever in possession. Richard and Nathaniel have, in obedience to the Decree, conveyed the lands to Respondent free from all incumbrances. Sir James was no party to the Decree, nor does it appear that he is prejudiced thereby. Pray that the Appeal may be dismissed. *Signed* Geo. Hutchins. *Endorsed* as brought in this day.

(b.) 8 May. Petition of Christopher Northend, of Beverley, in the County of York, Gent. Appellants Richard and Nathaniel have agreed with Petitioner, and Sir James Bradshaw was never a party to the suit, but has brought the Appeal without any authority from them. Prays for an early day for hearing, and that the Appeal may be dismissed. L. J., XIV. 205.

(c.) 11 May. Petition of Sir James Bradshaw for postponement of hearing. L. J., XIV. 208.

(d.) *Undated.* Petition of same, to same effect as preceding.

59. April 16. L. Morley and Mounteagle (Privilege). — Information of Robert Tuder and Ann Weekes against John Browne, a Marshal's man, and Francis Tysan, who, on arresting one Isaac Symball, servant to the Lord Morley and Mounteagle, said they did not value his Lordship's protection at all, as he was a Papist and did not sit in the Parliament House. L. J., XIV. 177. MS. Min. of date. [On 20 April L. Morley assured the House he would take care for the future not to give protections. MS. Min.]

Annexed:—

(a.) *Undated.* Petition of John Brown, one of the Bearers of the Verges of their Majesties Household. Petitioner is in custody of Black Rod upon the false accusation of Isaac Symball and his confederates, persons of no reputation, in revenge for his arresting Symball for a just debt. Petitioner is a Protestant of sober life and conversation, and has never had an unmannerly thought of any Peer. Prays to be discharged, so that his wife and nine children may not be ruined. [Not noticed in records. Browne was ordered to be discharged on 20 April. L. J., XIV. 185.]

60. April 16. Countess of Anglesey.—Letter of Elizabeth, Countess of Anglesey, to Mr. Irons. He holds a farm of his Lordship at the rent of 100*l.* a year. If any of the land held be Westfield, Cowclose, and Sands, formerly rented by Edward Cole at 100*l.* a year, or Beanehills and Riccodslade, formerly held by one Wilson at the same rent, she gives him notice that those lands are made over to trustees for her use by the late Earl of Anglesey, her father-in-law, and the rent is payable to them. *Dated* 21 March 1688. To Mr. Irons, near Bleshington, in Oxfordshire. *Endorsed* 16 April 1689. [A petition of the Countess was, after the E. Anglesey had given the House an account of the business (MS. Min. 16 April), referred this day to the Committee for Privileges (L. J., XIV. 177), by whom the above letter was read on a complaint by E. Anglesey. Then *Mr. Montague*, one of the Lady's Trustees, said that his Lordship's Estate in Blechington was charged with a rentcharge to E. Rutland and himself, in trust for the Lady, which had been always duly paid until last year, which was a sufficient possession. The Lady actually received the rents from the tenants, and gave dis-

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charges herself. The Countess gave similar evidence, and it was ordered to Report as in L. J., XIV. 180. (Priv. Book 16 April.)]

61. April 16. Privilege of Peers.—Draft Order of the Committee for Privileges, as follows:—"Die Martis, 16 April 1689. By the Lords' Committees for Privileges, Ordered to report, That upon consideration had of certain honours and privileges that the Peers of this Realm have enjoyed in the Courts and presence of their Majesties' Predecessors, Kings of England, their Lordships find, by the information of persons of great honour and credit, that when the King was present at Plays and put on his hat, the Peers of the Realm there present did so likewise, and also at such times when the King used to walk abroad covered, they did likewise cover." [Ordered to be reported this day * (Priv. Book of date); but the report does not appear to have been made, there being no entry of it in L. J. The Committee for Privileges had been appointed on 23 Jan. (L. J., XIV. 104). On 28 Jan., V. Fauconberg in the Chair, the E. Macclesfield complained that Commoners put on their hats equally with Peers, that New Years' gifts ought to be given reciprocally between the King and Peers. After further proceedings in regard to the privileges of Peers at their trials, and the conduct of the Court of King's Bench in connection with the Earl of Devon (*See No. 62*), the Committee on 9 April resumed the subject reported on above. On that day, E. Macclesfield and E. Suffolk having stated that Peers had a privilege of being covered† in the King's Chapel and Play House before the King, if his Majesty was covered, and that they had seen it practised, it was proposed to report accordingly, but ordered that Sir Gilbert Talbot, Master of the Jewel House, Sir Charles Cottrell, sen^r, and Mr. Markham should attend and give information in the matter. On the 16th *Sir Charles Cottrell*, being called in, stated that always in the time of Charles I. the peers and peeresses only sat in the cock-pit at plays, and that the peers sat always covered, and none but peers did so, *E. Macclesfield* said the same. The *Bishop of Winchester* said that Charles I. used, when he put on his hat in the chapel, to give the sign to their Lordships to put on theirs. *E. Macclesfield* and the *Bishop of Winchester* said that when the King used to walk abroad with his hat on, the peers were covered also. The Committee then ordered to report as above. (Priv. Book 9, 16 April.)]

62. April 16. Privilege of Peerage (King's Bench).—Report by Geo. Bradbury to the Committee for Privileges, of proceedings in the Crown Office against Peers. In obedience to their Lordships'

* No entry can be found in the Journals or MS. Min. of any specific reference to the Committee of the matters dealt with in this report; but the MS. Min. of Feb. 8 contain the following, which is not in L. J.:—M. Halifax, Speaker *pro tem*. House adjourned during pleasure. House resumed. E. Macclesfield moved that the peers of England, when the King is at a play, that every peer put on his hat. It was so when the King played at tennis or in the Mall. The New Years' gifts which were between the King and peers, and the King to give wine, and that is taken off; the custom is run out. For trials of peers * * * (*See No. 62*.) Moved by E. Winchelsea, That when the King comes here with his crown, the peers should wear their coronets, and until King Charles I. (*sic*). When we are called in Parliament we may take a deer upon sounding a horn, and we are to have the venison. That creation money is due, and we have it not. *Proposed*, That the peers be covered when the King is present. To consider concerning the King's coming hither in debates. A message was brought from the House of Commons, etc. as in L. J., XIV. 121.

† In the MS. Min. of 10 May 1686, the usual entry to the effect that the Lords were uncovered during the reading of the Commission is struck through, and in the margin are the words "E. Bridgwater took notice that the Lords were covered."

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order of 12 Feb. he has searched in the Crown Office in the King's Bench as to (1) what proceedings have been there against any peer of the realm upon indictments or informations for criminal matters, and (2) what precedents there are, wherein defendants, being brought into Court by *Habeas Corpus* or by warrant, have been compelled to plead to any indictments or informations immediately, without having an imparlance, or further day given to plead. And in obedience to a further order of 9 April he has made an abstract of all matters he can find relating to these two matters. (See Annexes *a* and *b*.) As to their Lordships' command to enquire what Commissions have formerly been issued out, and what proceedings have been upon the Statute 14 Edw. III. c. 5, intituled Delays of Judgment in other Courts shall be redressed in Parliament, there are no footsteps in the Crown Office of any such Commission, that he can find. Dated this day. [At the first meeting of the Committee for Privileges on the 28th Jan., the Committee having been appointed on the 23rd (L. J., XIV. 104), *E. Macclesfield* complained that the Peerage was invaded in their trials; that a peer had not so fair a trial as a commoner. He urged that the peers ought not to be tried but in Parliament, and stated that the Courts in Westminster Hall used to be visited by two Earls, one Prelate, and two Barons, to see wherein was any failure of justice. The Statute of 14 Edw. III. was read, and Mr. Petyt was directed to inform the Committee at their next meeting how long it had been discontinued, and to inspect the privileges of peers in their trials. (Priv. Book 28 Jan.)—On 11 Feb. *Mr. Petyt* gave evidence that by the Stat. 15 Edw. III. no peers were to be tried but in Parliament. (This Statute and that of 14 Ed. III. 1 R. 2 were then read.) The Court of King's Bench had made great invasions into the privileges of the House. The Committee then agreed to move the House for an order to search the records of the Crown Office (L. J., XIV. 124), and the Clerks of the Privy Council were ordered to give an account of what they found touching the commitment of any Peer by that Board. (Priv. Book 11 Feb.)—On 9th April the Committee, after reading the Statute 11 Edw. III. c. 5, ordered *Mr. Bradbury* and *Mr. Petyt* to attend at the next meeting, and to give an account in writing of what they had found in the Crown Office in pursuance of the order of the House of 12 Feb., and in particular to inform the Committee what Commissions had formerly been issued out, and what proceedings had been had upon the Statute 14 Edw. III. c. 5 intituled Delays of Judgments in other Courts shall be redressed in Parliament. The Committee then agreed as follows: "Whereas the Committee have taken into consideration the great injury done to the Privileges of the Peers, as well as to the person of the Earl of Devon by the judgment given against him in the King's Bench, whereby his person was imprisoned, it is the desire of their Lordships that the said Earl of Devon, Lord Steward of His Majesty's Household, would on Tuesday the 16th inst. cause an account to be given to their Lordships in writing of the proceedings in that judgment, for their Lordships' further information." The *E. Macclesfield* was also desired to give the Committee at their next meeting an account of the proceedings against him at the Council Board. (Priv. Book 9 April.)—On 16 April *Mr. Bradbury* being called in said *Mr. Petyt* was not in town. He had made search in the Crown Office in the King's Bench, and offered a report in writing (Annexes (*a*) and (*b*)), and gave an account of the proceedings against the *E. Devon*, at the fining his Lordship in the King's Bench; and after debate, the Committee agreed to report that the proceedings against *E. Devon* were a violation of the privileges of Peers. (Priv. Book 16

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April. L. J., XIV. 187.) The House, on receiving this report, ordered the parties complained of to appear at the Bar on 4 May (L. J., *ibid.*). On 22 April, in Committee, Mr. Petyt offered his report (Annex (c)); as ordered on 12 Feb. The E. Macclesfield informed the Committee that in pursuance of the Statute 14 Edw. III. c. 5, he, with some other Lords, were appointed to examine complaints of delays and grievances in Westminster Hall, &c. He produced the opinion of J. Girdler concerning process of outlawry upon an information for a supposed misdemeanour, which was read and delivered back to him, until he thought fit to bring his own case in writing before the Committee. Mr. Petyt's paper was ordered to be reported to the House on 3 May, and the Committee made further orders desiring the Duke of Grafton, the Lord Lovelace, and the Archbishop of Canterbury and the other six bishops, vizt, Ely, Peterborough, Bath and Wells, Chichester, Bristol, and St. Asaphs to give accounts in writing of the proceedings had against them in the King's Bench, in their respective cases. (Priv. Book 22 April.)—On 30 April, the above orders were read, but none of the Lords, referred to in them, attended, nor any one for them, and the Committee then agreed to move the House for an order to compel them. L. Oswelston informed the Committee that he had had wrong done him by a bill preferred against him in the Exchequer for 20,000*l.* by the Duke of York on L. Arlington's account, to whom he was neither heir, executor, administrator, or assignee. His Lordship was frightened into the payment of it to the King. Then the Committee, after reading the Statute 14 Edw. III. c. 5, and Mr. Petyt's report concerning it, brought in on the 16th, ordered to report as in L. J., XIV. 197. (Priv. Book 30 April.) The House on receiving their report on 1 May ordered Mr. Petyt to search the Records in the Tower (L. J., XIV. 198, and Annex (d) below).—On 6 May the Judges complained of were heard at the Bar, and the MS. Min. supplement the Journal entry as follows:—*Sir Robert Wright* cited as their authorities a precedent of 18 April 1626, when the Commons, upon a petition, declared no privilege to treason or to breach of the peace, and the opinion of the Lords that there is no privilege in these points; Rot. Parl. 8 Hen. VI. No. 57, and 1 Car. Case of Lord Vaux; and 14 May 1685. These were all the precedents they had, but there were several. *Sir Richard Holloway* then said it was grounded as in the Record. Before the Statute 33 Hen. VIII. it was punishable by death in the King's presence. He goes not about to justify the proceedings; he looks upon it as an excessive fine. They were misguided as to the great fine. It was the greatness of his estate made them give so great a fine. He appeals to E. Devon if he did not say to his Lordship that it was the sense of the Court. He must be precluded by the Record; King's Counsel praying the Court, though his Lordship ought to stand committed. Cites 2 Hen. IV. fol. 15: in both those cases a *Capias* lies for a contempt. Upon this account he was misguided. He does not justify anything; he submits all to their Lordships. He sat very uneasy, while he was there; he never did anything to prejudice anyone willingly. He was for the lowest fine; it was not his, but the fine of the whole Court. On debate of the excessiveness of the fine, the House ordered the Judges to give their opinion how the law stood as to the commitment of a peer upon a fine to the King. L. Chief Justice says he would have been glad to have had time. The point is, whether if a peer be fined, he can be committed upon a fine? He is of opinion he may. A peer may be taken upon a statute. According to the best of his memory, he takes it, at the suit of the King, a peer may be committed. But he cannot

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remember any precedent. *L. Chief Baron*: Thinks it hard to be forced to answer presently. This committing to prison is for the fine, to secure the payment. Every peer is supposed to have a fee estate by Barony. Body, lands, and goods for the King, and the estate being large, ought not to be committed. *Dolben, J.*: Is of opinion that a peer in this case may be imprisoned. Fine and imprisonment is the judgment of the law. *Nevill, J.*: Here is a Lord brought before the King's Bench, and they have taken cognizance of it. The censure must follow upon a peer, as well as any other. He cannot give his opinion on either side. *Gregory, B.*: This is at the King's suit. At the suit of a private person, a peer cannot be committed, but this is for the King. The fine is become a debt. Is of opinion that a peer may have privilege in this case. Asked how they distinguished the case to the King and to a private person, *L. C. Justice [Holt]* says the process out of the Exchequer is Body, lands, and goods. The House then ordered the Judges to give their opinions the next day how the law stands as to the commitment of a Peer upon a fine to the King (*L. J.*, XIV. 202).—On 7 May, accordingly, the Judges were heard. *L. C. Justice [Holt]* states his opinion, and cites *Q. Eliz. Inst. Coke*, 3 Rep. p. 170 (*sic*).^{*} A writ of error brought against *L. Strafford* as a peer. There is a fine and a commitment. It was resolved that, it being upon a statute, and for a contempt, a *Capias* lies. In the case of *E. Lincoln v. Flower*, 38 Eliz. Easter term, it was assigned for error that, being a nobleman, there ought not to have been a *Capias*.[†] In the *Marquess of Winchester's* case, 14 Car. I.,[‡] the judgment was reversed because there was not a *Capias*. 29 Edw. III. fol. 3; no *Capias* against a Bishop. Rolles' Abridgement 228 (*sic*).[§] He submits all to their Lordships' judgment. *L. C. Baron [Atkyns]*: Would observe somewhat upon the before-mentioned precedents. In general, where there is a fine, there is a *Capiatur*. Fines are in cases of force or breach of the peace. The statute of 35 [? 25] Edw. III. c. 17 made no distinction. Speaks to the following cases 25 Eliz. 17. ch. 170 (*sic*), 11 Hen. IV. fol. 15 (*Lady Spencer's* case); *Dyer*, fol. 315, in the case of a Bishop; || 14 Eliz., and *E. Lincoln v. Flower*. There was a contempt of law in those cases; in a breach of the peace a peer may be taken. 14 Eliz. *L. Cromwell's* case in the Court of Chancery, 1572; he was fined by *James Taverner*. The judgment of the House was that notwithstanding what they had heard, his privilege did protect his body. *Dolben, J.*: Yesterday he delivered his opinion that a peer might be committed upon a fine. The case in *Croke* is clear in this case. Instances in the bishop's case; a bishop takes exception that there is no *Capiatur*. 29 Edw. III. He cannot tell how to alter his opinion. He adds *L. Coke's* opinion 3 Inst. fol. 118. 6 Jac. in the Exchequer 8 Report, if judgment be given against any person, he shall be fined and a *Capiatur*. In the Countess of Rutland's case, he finds a *Capiatur* is always entered. He is of the same opinion as before. *Nevill, B.*: The question is whether any peer of this kingdom may be taken upon a fine to the King. All

^{*} The references are clearly to the *Countess of Rutland's* case in 6 Coke, Rep. 54a, Vol. III. p. 364, and *Lord Strafford v. Thynne*, 32 Eliz. Croke's Rep. Vol. I. p. 170, citing in margin 2 Inst. 236.

[†] See *Croke's Rep.* Vol. II. p. 503.

[‡] *Ib.* Vol. IV. p. 504.

[§] The proper reference is to 1 Rolles' Abr. p. 220. Tit. "Amercement," i.e. "Si un Evesque soit attainct en un brief de Oier et Terminer pour arser de measons, le judgment ne serra quod capiatur. 29 Ass. 33." *Dyer Rep.* Vol. III. fol. 315 cites also 29 Ass. 33 and 29 Edw. III. 31.

|| *Lady Wake v. Bishop of Ely*.

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the authorities have been cited that can be found. As for the case in Hen. IV. (Lady Spencer's case) he is of opinion it is for taking a peer. In 27 Hen. VIII. and Hen. V. it is resolved that a *Capias* does lie. In 14 Hen. VII. a trespass was brought against an Earl, and he was found guilty. The peer was in execution for that fine. If a fine be imposed, he is of opinion there may be a way found to make him pay it. *Gregory, J.*: The difference is between a peer and a commoner. Mentions several cases before mentioned, and argues upon E. Lincoln's case. Refers to Lady Spencer's case. In debt or trespass a case lies not against a Baron, but in case of force they may. 11 Hen. IV. There may be a *Capias* in the case of the King. *Mr. Petyt* speaks to L. Stafford's case. He finds none before that time. He instances a case in Star Chamber, Crompt. Jurisd. of Parliament. *Mr. Bradbury*: Had once occasion to think of this business, when E. Devon sent for him. He told the Earl the bond would be as a Recognizance to him. There is a caution in a process excepting peers in the long writs to the Sheriffs. The Journal entry of L. Cromwell's case, 14 Eliz., was then read, and after debate the House ordered that on Wednesday * the 15th inst. they would take into consideration the question, arising on the case of the Earl of Devonshire; Whether a Peer may by law be committed in execution for a fine? (L. J., XIV. 203), after which on question, Whether it shall be added to this order that some gentlemen of the long robe be heard on Wednesday next, the previous question was resolved in the negative (MS. Min. 7 May).—On May 14, the Keeper of Newgate was ordered to bring Sir Robert Wright, and on the 15th *Captain Rich*, at the Bar, said Sir Robert was below, but very ill, and it was said he could not live a week, and his memory was very much gone. Leave was given to carry him back again (MS. Min. of dates).—On the 15th the House resumed the consideration of E. Devon's case. King's Counsel were called in, and being asked if they had any notice of it, *Mr. Hutchins* said they saw such an order, and desired time to ask the King whether they might or might not plead in the case. *Mr. Serjeant Bond* spoke to the same effect, that they being the King's Counsel, must have time to acquaint the King with it. L. Cromwell's case was then read, and after debate, the Judges were asked upon what foundation in law the words "*quod Capiatur*" are grounded for a fine? *L. Chief Baron*: Never heard of any statute law for it. In the case of a common person there must be a *Capiatur*. In the case of a peer there is no ground for it. *Dolben, J.*: There is no statute law; but at common law it is certain. He has known within 40 years that several judgments have been reversed for want of a *Capiatur*. It is as ancient as any judgment is. *Sir Edward Nevill*: Not by statute law; but it is there, as all other things in common law are, and without it the judgments are erroneous. The forms of *Misericordia* and *Capiatur* are the common law by usage and pleadings. *Gregory, J.*: It is not by any statute. It is the general usage—the common law. It is the law of those Courts, and judgments in all cases have been reversed, where it has not been. After debate, Whether it shall be entered in the Journal as the Resolution of this House, that no Peer ought to be committed for the non-payment of a fine; *Resolved* in the affirmative. A Committee was then appointed to draw the orders and resolutions of the House in E. Devon's case into method, so as to be entered in the Journals; the Committee being named as follows: D. Bolton, E.

* The day first appointed was Tuesday the 14th (MS. Min.).

Rochester, E. Bedford, L. Steward, E. Bridgewater, E. Stamford, V. Weymouth, L. Cornwallis, L. North, BP Sarum, BP St. Asaph. Any three to meet tomorrow at 9 a.m. in the Prince's Lodging, and to report. This report, which appears in the printed Journal of the 15th (L. J., XIV. 211), appears from the MS. Min. to have been made on the 16th. (MS. Min. 15 and 16 May.)]

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Annexed :—

(a.) 16 April 1689. Proceedings against peers, being the first paper referred to above. They are as follow :—

2 Jac. I. Lord Cromwell and servants. Indictment found at Assizes for forcible entry, removed into Court of King's Bench, and there adjudged good.

5 Jac. I. City of Coventry, Ro. 43. Lord Bartley. Indictment for trespass. *Venire facias* and *distringas in infinitum* awarded. No appearance.

1649. Lord Petre and others. Essex, Ro. 2. Indicted for riot, pleaded not guilty. *Venire facias* and *distringas* awarded in 1651. *Nolle prosequi* entered in 1651 on record.

1650. Middlesex, No. 83. Lord Carr and others. Indicted for assault. *Venire facias* only awarded.

1656. Southampton, Mich. No. 187. Lord Sands of Mottefont and others. Information for Riot : pleaded not guilty. No further process.

33 Car. II. Ebor., Mich. Nos. 61, 62. E. Stafford. Information by Attorney-General for trespass and contempt against Statute for preservation of wood. Appeared ; afterwards demurred : no further process.

1 Jac. II. Berks, pas. No. 16. Lord Lovelace. Information by Sir Rob. Sawyer for assault. *Venire facias* only awarded, and in 3 Jac. II. a *Nolle prosequi*.

3 Jac. II. Surrey. D. Grafton. Indictment for forcible entry and detainer. Appeared in Michaelmas term following, and discharged the indictment for insufficiency.

3 Jac. II. Middlesex, pas. No. 37. E. Devonshire. Information by Attorney-General for assault on Mr. Thos. Colepepper in Whitehall. Plea tendered to jurisdiction of the Court, and disallowed. Plea of Not Guilty : plea afterwards withdrawn, and Earl fined 30,000*l.* and committed in execution.

3 Jac. II. Surrey, Mich. No. 64. E. Devonshire. Information by Attorney-General for trespass and voluntary escape. *Nolle prosequi* afterwards entered.

4 Jac. II. Berks, pas. No. 18. L. Lovelace. Information by Attorney-General (Sir Thos. Powys) for misdemeanour in contemning the authority of Popish justices, and encouraging officers, to whom their warrant was directed, to disobey it. Appeared, and pleaded a special plea. No further proceedings.

4 Jac. II. Middlesex. The Seven Bishops. Information by Attorney-General (Sir Thos. Powys) against Archbishop of Canterbury and six other bishops for delivering a petition to the King. Brought up to King's Bench Court by *Habeas Corpus*, and pleaded right of peerage and to the jurisdiction of the Court. Plea rejected, and ordered to plead Not Guilty, and on trial acquitted.—*Signed* Geo. Bradbury. [Offered to Committee for Privileges this day. Priv. Book 16 April.]

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(b.) 16 April 1689. Precedents of pleading immediately, being the second paper referred to in above Report; vizt:—

- 23 Car. I. The Fleet.—Geoffrey and Thomas Diersly.
- 1649. The Fleet.—W^m Wilkes.
- 1651. „ —Richard Watkins.
- 1652. „ —Richard Falkner.
- 1653. Gatehouse.—Roger Atlee.
- 1656. King's Bench Prison.—Thos. Dickinson.
- 13 Car. II. Gatehouse.—Henry Field, Clerk.
- 19 Car. II. Middlesex.—Rex v. W^m Carr. Mr. Coieman.
- 20 Car. II. Surrey.—John Powell, Richard Vaughan, William, Charles, and Richard Farr.
- 22 Car. II. Middlesex.—Rex v. Potter.
- 23 Car. II. Middlesex.—Rex v. Maynard.
- 24 Car. II. York.—Rex v. Siddall.
- 24 Car. II. Middlesex.—Rex v. Thos. Stafford.
- 25 Car. II.—Rex v. John Brooke.
- 26 Car. II. Whitechapel.—Rex v. W^m Hollingshead.
- 26 Car. II.—Elizabeth Trussell.
- 27 Car. II. Surrey.—Rex v. John Taylor.

Noted. From this time downwards there are many precedents.

Signed, Geo. Bradbury. [Offered to Committee for Privileges this day. Priv. Book 16 April.]

(c.) 22 April. Report of Mr. Petyt, to the Committee for Privileges, made in obedience to their order of 12 Feb. After repeating the precedents set out in Annex (a) above, the Report goes on to observe "*Firstly*: that the first indictment which the Clerks of the Crown Office have produced against a Peer of the Realm for a misdemeanour is in the second year of James I., which gave birth for a second indictment in the fifth year of the same King, and that for a third in 1649, and so for a fourth in 1656. From whence it follows that indictments in the Crown Office against Peers of the Realm for misdemeanours were but of a moderate use. *Secondly*: And it is as plain that the first information against a Peer was not before the year 1656, exhibited by the then Attorney-General against the Lord Sands, though it never came to a trial. And from thence till 33 Car. II., when another Information was exhibited against William, Earl of Strafford, to which he demurred, and no further proceedings were thereupon had; there is a general silence of any Information against a Peer. But, however, these two precedents seemed sufficient to warrant the exhibiting the following informations—

1. An information against the Lord Lovelace in 1 Jac. 2.
2. Another against the Duke of Grafton, 3 Jac.
3. Another against the Earl of Devonshire, 3 Jac.
4. Another against him in the same year.
5. Another against the Lord Lovelace, 4 Jac. II.
6. And last, another which was exhibited against the Archbishop of Canterbury and six other bishops, 4 Jac. II.

And thus the practice of proceeding against peers by way of Information in the King's Bench hath had, for anything yet appears to me, its original rise and growth, till at last it became so dangerous to the honour and safety of the whole peerage of England. And the reason of all this was, as I conceive, because proceedings against peers of the realm for misdemeanours were not prosecuted in the King's Bench, but in the Star

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Chamber, till that Court for undertaking to punish where no law did warrant, and to make decrees for things they had no authority for, and inflicted heavier punishments than by any law was warranted, was by Act of Parliament made 17 Car. I. for ever dissolved. *Thirdly*: In the case of the bishops they were ordered by the Court to plead presently to their Information, but whether the Court had any precedent to warrant such a proceeding was then a question, but overruled against the prisoners. To warrant which the Clerks of the Office produce several precedents made in the cases of common clippers, coiners, forgers, and other infamous criminals brought from Newgate and other places in custody, but they do not produce one single precedent that ever any such thing was done in the case of a peer till the Bishops' case. *Fourthly*: And lastly the most ancient precedent that the Clerks have showed me of immediate pleading to any Information, even by a Commoner, is no higher than 23 Car. I., not above 40 years since, which cannot make a custom according to the well known rule of law." *Signed* W. Petyt. [Offered to Committee for Privileges this day. Priv. Book 22 April.]

(d.) 1 May 1689. Draft Order, on Report from Committee for Privileges, for W. Petyt to search the records in the Tower. L. J., XIV. 198 *in extenso*.

63. April 16. *Hearth-Money Act*.—Petition of the Hon. Henry Howard, Esq., brother to the Earl of Suffolk. The late James, Earl of Suffolk, in 1660, sold to Charles II. for 50,000*l.* his manor house of Audley End, in Suffolk, the building whereof cost him and his ancestors 200,000*l.* He received 30,000*l.* in part payment, and the remaining 20,000*l.* was charged on several orders to be paid out of the Exchequer from the revenue arising from *Hearth-money*. Six orders, dated 7 April 1670, were so issued and registered; but about 1671, when the orders were very near to be paid, His Majesty stopped payment of all orders charged to be paid in course out of the said revenue in the Exchequer, by reason whereof the said 20,000*l.* has never been paid, though, Petitioner has no other provision for his younger children. Petitioner is informed that an Act is suddenly to be passed for taking away the revenue of *Hearth-money*. Prays that satisfaction may be made therein for his debt. [Referred this day to the Committee on the Bill for taking away *Hearth-money*. L. J., XIV. 177. In Committee on 20 April *Mr. Trevor* was heard for Petitioner, and said that the 20,000*l.* due from Charles II. and charged on the *Hearth Money* was part of the purchase-money for Audley House. This was a debt, and not a pension. The clause did not hinder the King from paying a debt with this money, after it came into the Exchequer, but from granting pensions, &c. *Mr. Ward*: This 20,000*l.* is neither gift, grant, nor pension, neither in the words nor within the intention of the Statute, but a payment for the King's necessary occasions. Audley End is a continuing consideration for this money. *Mr. Howard* produced the six orders for his money, vizt., the first, for 2,000*l.* (No. 923); the second, for 3,000*l.* (No. 924); the third, for 5,000*l.* (No. 925); the fourth, for 2,000*l.* (No. 926); the fifth, for 3,000*l.* (No. 927); and the sixth, for 5,000*l.* (No. 928). Counsel then offers a proviso (See Annex (b) below).—Com. Book 20 April.]

Annexed:—

(a.) 16 April. Petition of Richard Brett, Esq. Charles II. charged 2,000*l.* upon the revenue of the *Hearth-Money*, being a debt owing by his Majesty, the benefit whereof is duly accrued

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to Petitioner for money actually paid by him, and Petitioner has received the interest thereof to 14 June, 1688. Prays that the 2,000*l.* may be secured by the Bill before their Lordships. [Referred this day to the Committee on the Bill. L. J., XIV. 177. In Committee, *Sir Francis Winnington* was heard, as Counsel for Petitioner, and produced a certificate of *Sir Robert Howard* that the 2,000*l.* was due upon the Hearth Money. The Act was to prevent liberalities and bounties, and not to hinder paying the King's debts. Mr. Brett's was a real debt, and interest had been paid. Produces an order for 2,000*l.*, numbered 761, on the Exchequer. Offers a Proviso (See Annex (c) below), on behalf of his client. Com. Book 20 April.]

(b.) 20 April. Proviso A, as follows: Provided also, it is hereby further enacted, declared and provided by the authority aforesaid, That the sum of 20,000*l.* charged by Privy Seal and six several Orders, registered in the receipt of the Exchequer upon the said revenue of Hearth-money by his late Majesty King Charles II., for satisfying of 20,000*l.* due and payable from his said late Majesty to James, late Earl of Suffolk, deceased (being the remaining part of 50,000*l.* agreed to be paid by his late Majesty to the said Earl of Suffolk for Audley End House and Park, in the County of Essex, sold and conveyed by the said Earl to his said late Majesty, his heirs and successors), shall be paid, issued, and satisfied to the Hon^{ble} Henry Howard, Esq., to the Right Hon^{ble} Anne, Countess Dowager of Suffolk, and Richard Newman, Esq., Executors of the said James, Earl of Suffolk, out of such part of the said revenue by Hearth-money as shall grow due on the 25th day of March, Anno Domini 1689, and of the arrears of the said revenue, which shall be first paid into his Majesty's Exchequer, subject to the devises and trusts of the last will and testament of the said Earl; And the Auditor and all other officers, persons, and ministers of the Exchequer are hereby enabled, authorized and required to pay and issue the said 20,000*l.* accordingly, anything in this Act or in any other Act or Law or any other matter or thing to the contrary notwithstanding. [This and the next proviso were offered by the Counsel for Hon. Henry Howard and Richard Brett respectively to the Committee this day and were agreed to on the 22nd, but were disagreed to by the House on report. Com. Book of dates, and L. J., XIV. 187.]

(c.) 20 April. Proviso B, as follows: Provided also, and it is hereby further enacted, declared and provided by authority aforesaid, That the sum of 2,000*l.* upon the said revenue of Hearth-money by his late Majesty King Charles II., due and payable from his said late Majesty to Richard Brett, Esq., shall be paid, issued and satisfied out of such part of the said revenue by Heath-money as shall be due on the 25th of March, 1689, and out of the arrears of the said revenue which shall be first paid into his Majesty's Exchequer, to Richard Brett, Esq., after the course and method of payments in the Exchequer; And the Auditor and all other officers of the Exchequer are hereby enabled, directed and required to pay and issue the same accordingly, anything in this Act or any other Act to the contrary notwithstanding. [See note to preceding paper.]

64. April 16. *Barnadiston v. The King*.—Copy Writ of Error and transcript of Record. The indictment is printed *in extenso* in *Howell's State Trials*, IX., p. 1,336 sqq. [The Writ of Error, &c. was

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brought in this day. (L. J., XIV. 177.) The cause was heard, and the judgment of the Court of King's Bench reversed on 14 May (*ib.* 210). No Counsel appeared for the King; *Baker* sworn to the service on the King's Counsel. *Serjeant Thompson* (for Plaintiff) : He was imprisoned till he paid the fine of 10,000*l.* The judgment and the entering of it are both erroneous. What is spoken by the party may be explained by an innuendo. Sham Protestant Plot, and the innuendo cannot help it. They set forth a second letter. 1 Dec. a third letter. 10,000*l.* fine upon a gentleman for writing four letters into the country. There never was so great a fine till of late, except in the Star Chamber. *Mr. Ward* (for Plaintiff) : *Inter alia* he wrote such things as these. That is the first exception. And they ought wholly and entirely to be set out. Cites *Coke* 4 Rep. and *Hobart** to show that. The office of Innuendo is only to the same person and thing. Here is no *colloquendo*. How does this *constare*, that Sir Samuel wrote this to carry on the Plot? You transgress the office of Innuendo, and the jury finding is nothing. Sir Geo. is very humble. It was tried before the said innuendo, Sir Geo. as they make it (*sic*). The *Lord Privy Seal* then stated the case, and as to the points in law, the Judges were asked as to the nature of the innuendo, and the errors and exceptions they made to it. *L. C. Justice Holt* : Looks upon it that the crime is yet justly alleged. If words are scandalous, it is a great offence, if spoken of the person, it is not here applied to these Plots. If these letters had been to reproach these trials, they might have been libellous. An Innuendo is to keep the mind of any person to the thing. *Inter alia* is well enough he thinks. As to the fine of 10,000*l.*, it is a great fine after his giving security for life. It is done upon an extraordinary case as a [?] Barratry or the like. This is an outrageous fine. *Sir W. Dolben* : Is of opinion this judgment is erroneous, and ought to be reversed. The innuendos are new, and were never heard of till within four years. They are so shameful, he never heard of the like. *Mr. Justice Gregory* : The judgment is exceedingly extravagant. The House then reversed the judgment below. The ground of the judgment is an innuendo. Exorbitancy of the fine. The binding to good behaviour during life. A Committee was appointed to draw up the reasons, viz^t :—D. Bolton, E. Bridgewater, E. Macclesfield, E. Oxford, E. Berkeley, E. Stamford, L. Cornwallis, L. Pagett, and L. Weymouth, with Mr. Justice Gregory to assist. The *L. C. Justice* being asked whether the 4,000*l.* not paid be secured, said for what was not actually paid, the reversing of judgment stopped it. The Committee, E. Stamford in the chair, agreed to and reported their reasons on the 15th (Com. Book), when they were read and agreed to by the House. (MS. Min. 14 and 15 May.) They are printed in the Journal of the 14th. L. J., XIV. 210.]

65. April 18. Writ of Assistance. (C. Justice Holt.)—Writ of Assistance, dated this day, to John Holt, Kn^t, Chief Justice of the Common Pleas.

66. April 20. Writ of Summons. (D. Cumberland.)—Writ of Summons, dated 13 April to George, D. Cumberland. [Introduced this day, L. J., XIV. 183.]

67. April 22. Lisle's Attainder Reversal Act.—Draft of a Bill for annulling and making void an Attainder of Alicia Lisle, Widow. Noted in margin "I do allow of the bringing in this Bill. WILLIAM, R." [Read 1^a this day: Royal Assent 24 May. L. J., XIV. 186, 217. 1 W. & M. c. 26 in Long Calendar.]

* See Hobart's Reports, Index, Title "Innuendo."

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68. April 23. Garter's Roll.—A List of the Nobility of England according to their respective Precedencies. [All the Lords in and about the town were summoned to be present this day. L. J., XIV., 187 and MS. Min. 22 April.]

69. April 24. Sydney's Attainder Reversal Act.—Amended draft of an Act for annulling and making void the Attainder of Algernon Sydney, Esquire. *Noted* in margin "We do allow and approve of the bringing in of this Bill. WILLIAM, R." The Commons' amendments are purely verbal. [Read 1^a, 2^a and committed this day; Royal Assent 11 May. L. J., XIV. 189, 209. 1 W. & M. c. 24 in Long Calendar.]

70. April 24. Habeas Corpus Suspension Act.—Draft of an Act for empowering His Majesty to apprehend and detain such persons as he shall find just cause to suspect are conspiring against the Government. Identical with Act. [Read 1^a, 2^a, and ordered to be engrossed this day. L. J., XIV. 190. MS. Min. of date. Royal Assent same day. L. J., XIV. 191. 1 W. & M. c. 7.]

71. April 25. James II. (Treasonable Correspondence) Bill.—Amended* draft of an Act making and declaring it to be treason to keep any intelligence or maintain any correspondence with the late King James the Second. "Whereas it doth manifestly appear that diverse plots and conspiracies have of late been devised and laid, as well in foreign parts beyond the seas, as also in the kingdoms of Scotland and Ireland, and in this realm of England, to the endangering of the persons of our sovereign Lord and Lady King William and Queen Mary, and the subverting of the government, and disturbing the peace of this kingdom, and embroiling of this nation in blood, for the carrying on of which wicked designs diverse correspondences have been of late and yet are holden between the late King James the Second and his adherents, both in the kingdoms of England, Scotland, and Ireland, and in foreign parts beyond the seas. For preventing the mischiefs that may arise from such traitorous conspiracies, the Lords Spiritual and Temporal and Commons now assembled in Parliament do beseech their Majesties that it may be enacted, And be it enacted, ordained, and declared by the King and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons now assembled in Parliament, and by authority of the same, That if any person or persons within† *the cities of London and Westminster, or in any place within the distance of fifty miles from London, shall from and after the nineteenth day of May next ensuing, and all others in all other parts of the realm of England,‡ dominion of Wales, or town of Berwick upon Tweed, the isles of Guernsey or Jersey, or any other their Majesties' dominions*, shall from and after the first day of [May] *June* in the year of our Lord one thousand six hundred eighty and nine, advisedly and maliciously proclaim, declare, or publish [or promote] the said late King James the Second to be the King of this realm of England, or of Ireland, or of any of the dominions thereunto belonging, or shall be aiding, assisting, comforting, or abetting

* The additions are shown by italics, and the omissions by square brackets. The amendments, except where otherwise specified in the footnotes, were made in the Lords' Committee.

† As to this amendment, see Annex (c) and note.

‡ There is a *caret* here marked on the draft. The word ("*Ireland*") was inserted by the Committee (Com. Book 26 April), but the amendment is struck through in the List of the Committee's Amendments in Annex (a), being superseded on Report by the addition of the words immediately following in italics.

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[unto] any person or persons that [shall by any ways or means whatsoever endeavour or attempt the reviving or setting up of any pretended right, title, or claim of the said late King James the Second to any the offices, style, title, dignity, or authority of King of these realms of England and Ireland, or either of them, or of the dominions thereunto belonging] *is, are or shall be adhering to the late King James, knowing him or them to be such,* or shall from and after the [said first day of May] *respective days before mentioned,** hold any intelligence or maintain, entertain, or keep any correspondence with the said late King James the Second or any of his adherents, *knowing them to be such, in order to the advancing the pretended title of the late King James,* or shall *advisedly and maliciously* give or contribute any sum or sums of money, advice, or other aid or assistance, to the said late King James the Second or any other his adherents, *knowing them to be such,* or shall plot, contrive, or endeavour the betraying, surrendering or yielding up any city, town, haven, castle, fort, magazine, ship, vessel, *arms, ammunition, or other utensils of war,* or forces by land or by sea, belonging unto these kingdoms of England or Ireland, and dominion of Wales, or town of Berwick-upon-Tweed unto the said late King James the Second or any of his adherents, *knowing them to be such,* or shall advisedly and maliciously plot, contrive, or endeavour by any open act to stir up mutiny in their now Majesties' armies or fleets or amongst any of their forces by sea or land, or to withdraw any officer or soldier, mariner, or seaman from his or their obedience to their said Majesties, or shall invite, procure, aid, or assist any foreigner or stranger to invade these kingdoms of England, *Scotland,* or Ireland, *Guernsey, Jersey, or any other their Majesties' dominions,* or shall adhere to any forces that shall be raised against their said Majesties; Then all and every the offences aforesaid shall be, and are hereby deemed, ordained, declared and adjudged to be high treason, and the offenders therein being lawfully convicted or attainted upon the oaths of two lawful and credible witnesses upon trial or otherwise by due course of law, shall suffer pains of death, and also lose and forfeit as in case of high treason." Here Clauses marked A (Annex c) are to be added. [Read 1^a this day. L. J., XIV. 192. Rejected in the Commons, after a second reading. C. J., X. 121. Leave had been given on 24th to bring in the Bill. MS. Min. The original draft is in the handwriting of L. C. Baron Atkyns.]

Annexed :—

(a.) 26 April. List of Lords' Amendments made in Committee this day. Com. Book.

(b.) 27 April. Paper marked A, containing amended clauses and proviso as follows: "And to the end that no man may hereafter excuse himself by ignorance, or for want of due and timely notice of this law, Be it further enacted that a sufficient number of printed copies of this Act shall, before the *fifteenth* day of *May* next ensuing, be sent and delivered to every Sheriff or to the Sheriffs of every respective county or city, enjoining and commanding such Sheriff or Sheriffs to cause or procure this Act to be openly read in every parish church in his or their respective county or city next after the morning service on the next Lord's day after his or their receipt of the said printed copies, and that the same be likewise openly read and proclaimed in the time of full

* Amended by Committee, substituting (" June ") for (" May "), and subsequently amended as above, on Report. See Annex (c) note.

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market in every market town within his or their respective county within the space of [one month] *ten days* next after his or their receipt of the said copies. Provided always that nothing in this Act contained shall be deemed, construed, or taken to extend to the hindering of any prosecution upon any other law or statute for any of the offences mentioned in this Act, so as no person be doubly punished for one and the same offence.

And be it further enacted, etc., that in all cases of treason as aforesaid there shall be two witnesses of one and the same express overt act. And be it further enacted by, etc., That in all [criminal] cases as aforesaid evidence shall be given upon oath for the Defendant. And that every peer and peeress and other person that shall be indicted of any such offence as aforesaid, for which he shall be tried by his or her peers, or in the Court of King's Bench, shall have a copy of the indictment translated into English, whereupon he or she is to be arraigned, by the space of a week before such arraignment, and also of the panel by the space of two days before the trial, and in other inferior Courts a copy of the indictment a night before the arraignment, and a copy of the panel two hours before the trial. And that in all cases of high treason as aforesaid the Defendant and Defendants shall be admitted to have Counsel to advise them before and at their trials in matter of fact as well as law, and the same Counsel, if the Party demands it, shall be assigned by the Court, and the said Defendant and Defendants shall likewise be allowed to challenge any returned of the jury to try him for want of freehold. Provided always that no person or persons be prosecuted for any of the offences in this Act contained, unless he or they be prosecuted for the same within three months next after the offence committed, and indicted thereupon within three months after such prosecution, anything herein contained to the contrary in anywise notwithstanding. Provided also that this Act shall continue for three years, and from thence to the end of the next session of Parliament, and no longer." [Added in Committee this day. The first clause and proviso are in the handwriting of L. C. Baron Atkyns, and were offered by him, as directed by the Committee on the previous day. Com. Book April 26 and 27.]

- (c.) 27 April. Paper containing two amendments. No. 1 is twice drafted, viz. firstly as follows: "On the fifteenth day of May, within the cities of London and Westminster, and all places at the distance of fifty miles from London and in the whole Kingdom of England, Principality of Wales and Berwick-upon-Tweed," and secondly, with corrections, shown by italics and square brackets, as follows: "Within the cities of London and Westminster [and] or in [all places] *any place* [that are] *within the distance of* fifty miles [distant] from London, shall from and after the [fifteenth] *nineteenth* day of May next *ensuing* and all others [within the rest of] *in all other parts of*." No. 2, a consequential amendment, is to substitute for ("the said day of May") the words ("*the respective days before mentioned*"). [These two amendments are not mentioned in Com. Book, and are no doubt the amendments made on Report on 27 April. J. J., XIV. 194, MS. Min.]

72. April 29. Philipson v. Copley.—Petition of Sir Christopher Philipson, Knt. Christopher Gilpin, in 1650, conveyed the demesne of

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Kentmer and Vethwaite Mill, in Westmoreland, for valuable consideration, to Mary Philipson, in trust for her son, Huddleston Philipson, Petitioner's father, who durst not take the deed in his own name, because he was a great loyalist and afraid of sequestrations. Gilpin afterwards married the daughter of Nathaniel Nicholson, who, being a potent man in those usurping times, obtained from him an absolute conveyance of the lands for a pretended consideration of 1,520*l.*, whereas little or no money was ever paid, the said conveyance being intended only to protect the land from sequestration. In 1650 Petitioner's father brought an ejectment against Nicholson, and the matter was referred to two gentlemen of the county, who awarded that 750*l.* should be paid by Philipson to Nicholson for the lands within a year. Philipson died before the money was paid, and Nicholson, taking advantage of Petitioner's infancy, obtained a Decree against him, by surprise, for the whole 1,520*l.*, which Decree, though never enrolled, was confirmed by a Decree of Lord Chancellor Jeffreys on 11 June 1686. Appeals against both Decrees, and prays that Nicholson's co-heirs, Beatrix, the wife of John Copley, and Judith, the wife of George Carns, be ordered to accept the 750*l.* awarded and account for the mesne profits, or that Petitioner may be left to try his right at law, in spite of an Injunction obtained against him. *Signed* by Appellant; *Countersigned* Hen. Penton. [Read this day. L. J., XIV. 195. At the Hearing, on 17 June, *Mr. Finch* and *Mr. Copley* appeared for the Appellant, and *Sir Ambrose Phillipps* and *Sir Robt. Sawyer* for Respondents, on whose behalf it was stated that 1,600*l.* was due at the time of the award. MS. Min. 7 June. L. J., XIV. 236.]

Annexed:—

(a.) 29 May. Answer of John Copley, Gent., and Beatrice, his wife, George Carns, Gent., and Judith, his wife. The conveyance to Mary Philipson, though the sum of 1,700*l.* was mentioned as the consideration, was made to defraud Nicholson, as was acknowledged by Huddleston Philipson, who in 1655 joined in an award which shared the estate between Nicholson and Gilpin, and for a jointure for Elizabeth, the wife of Gilpin and daughter of Nicholson. Not one penny of the 1,700*l.* was ever set forth as having been paid. The award for 750*l.* is 30 years old, and no execution was ever had thereof. Gilpin and his wife should have been parties to the Appeal. *Endorsed* as brought in this day.

73. April 30. *Orme v. Gell*.—Petition of Thomas Orme, Esq., one of the trustees and creditors of Charles Agard, Esq., deceased. Charles Agard, having a large estate but being much indebted, and desiring to pay his debts and indemnify Petitioners and others, who stood engaged for him in the first place, conveyed by deed of 4/5 Feb. 1678 all his real estate to Petitioner, John Adderley and Ferdinando Lowe, in trust for himself for life, and by his will of 15 Feb. appointed that the estate should remain to the said trustees and their heirs. He died, leaving his wife and his son John his executors, but did not annex any schedule of his debts either to his will or to the conveyance. Petitioner had lent Agard 530*l.*, and was also surety for him in above 3,000*l.*, and Adderley was also engaged for 4,000*l.*, and Lowe was a creditor for 1,100*l.* Petitioner and his co-trustees, being advised that the debts due to themselves or which they stood bound for, were intended to have a preference, reimbursed themselves out of the trust estate, to the extent of all but 140*l.*, not knowing all the debts or creditors, and believing the estate would

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have been sufficient to pay all. Afterwards Sir John Gell, another creditor, brought a bill in Chancery against the trustees, suggesting a breach of trust in giving preference to their own debts. The cause being heard on 15 June, 1681, the L. Chancellor Nottingham declared the trust to be a general trust, and that all creditors ought to have equal satisfaction, and ordered an account to be taken accordingly. The trustees' bill to reverse this decree was dismissed, and another bill was then brought by Gell and the other unsatisfied creditors against Sir John Curzon, John Jackson, clerk, and other creditors who had received satisfaction, to refund in proportion, since which time Petitioner is to pay above 2,147*l.* out of his own purse, though guilty of no breach of trust. Prays that the decree may be reversed. *Signed* by Appellant; *Countersigned* Geo. Hutchins. L. J., XIV. 196. [The Appeal was heard on 27 June. Mr. Samuel Tryst (for Appellant) said: As to the trustees by lease and release, the Appellant did declare they would make sale. They paid all the debts they were engaged for. No schedule of debts appeared. The trust was a general trust. The Attorney General (for Appellant): They made payments according to their power. They paid off all debts engaged for. The question was whether they should be losers, having done as they ought. Nine months before they claimed their debts after all done, and any creditor that will not come in in due time. No creditor appeared before. Sir Ambrose Phillipps (for Respondents): The debts were 30,000*l.* or thereabouts. These gentlemen stand bound for 10,000*l.* He makes a provision for payment to Mr. Orme, Lowe, and Adderley. He makes his will, and says they shall pay all his debts to a penny. He died in March, and we claimed in Michaelmas term. The trustees say, Let us clear where we stand bound. In Michaelmas, 1679, our bill was filed. We complain that they were selling, and they stand in contempt till Easter term. In October they sell before answering. In law the executor may do it, but in equity there must be an average. It is not cognizable at law; it is an equitable case. They have paid, they say in their answer, interest for several of our debts. Only Mr. Orme stands out; the other trustees submitted. Lord Nottingham says the satisfied creditors ought to refund. They say, No, we will not refund, for we have delivered up our security. Lowe and Adderley were bound. Sir Charles Porter (for Respondents): The question is whether the Appellants that have misapplied the trust, and have been ordered to apply it aright by Chancery, shall be made good or not. While the bill was depending, the estate was sold. Mr. Feley was then heard for the Respondent Rickards. MS. Min. 27 June. L. J., XIV. 257.]

Annexed:—

- (a.) 28 May. Answer of Arthur Rickards, Gent. The decree of the late E. Nottingham, against which Appellant complains, is just. Prays that the Appeal may be dismissed with costs. *Signed* by Respondent; *Countersigned* T. Dyose.
- (b.) 28 May. Answer of Sir Bryan Broughton, Bart., Sir Edward Littleton, Bart., Thomas Browne, Henry Cavendish, John Fitzherbert, John Osborne, Henry Plumtre, and H. Holden, Esqrs., John Hough, Ralph Smith, Luke Glen, Andrew Glen, Gilbert Merry, Mark Hope, Thomas Allsopp, Thomas Ely, John Higgs, William Jackson, Robert Jerome, William Bowyer, Samuel Sturges, Daniel Leeson, Gilbert Mundy, John Ellis, Ester Sherwood, Ellen Bewiley, George Taylor, Thomas Heath, executors of Margaret Tickride, Henry Atkins, Dorothy Fox, Margery Glen, Francis Wilkinson, Joseph

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Wilkinson, James Motteram, Edmund Parker, as well in his own right as executor of Judith Blackwell, who was executrix of George Blackwell, Katherine Sitwell, Mary Squire, Christopher Davenport, surviving executor of John Harriman, and Rachel Tongue. The creditors of Agard having brought their bill in 1679 against the trustees and John Agard, the son, the trustees, pending the suit, sold the estate and repaid themselves, leaving 8,000*l.* debts still unsatisfied, most of which is still due to Respondents; and John Agard also sold part of the estate which was left out of the trust for about 4,100*l.*, and by connivance of the trustees disposed of the money among his relations and friends, including the trustees. The unsatisfied creditors having brought their bill against those whose debts had been discharged, the cause was heard by the late Lord Keeper North, who dismissed the bill as to such creditors as had any of the Trustees bound and had delivered up their securities, but ordered the Master, if he found that any creditors had received more than their share, and had none of the trustees bound, to report the same specially, and he reported Jackson accordingly, who, on the report being considered by the L. Chancellor Jeffreys, was ordered to refund, which he has accordingly done, and the money so received has been divided equally among the creditors. Adderley and Lowe, two of the trustees, proving insolvent, Respondents were forced to accept 950*l.* in lieu of 3,000*l.* Appellant, the other trustee, is liable for 2,147*l.*, which they hope he can pay, being a man of considerable estate. Pray that the decree complained of may be affirmed, except as to its dismissal of the satisfied creditors, against whom Respondents insist that they have an equitable claim to refund what they have received over and above their proper share. The trust estate was sold for less than its proper value, and the trustees, when selling it, thought only of themselves. To give trustees such powers of preference is to establish an evil precedent. Respondents have been kept in suit for nearly ten years, and have already spent large sums in endeavouring to get satisfaction under the trust. The testator never intended any preference, there being no mention of such in either the trust or the will. Pray that the Appeal may be dismissed. *Signed* by all the Respondents except Rachel Tongue, and also by Lucy Sturges, and *countersigned* by Hen. Penton. *Endorsed* as brought in this day.

(c.) 18 June. Petition of Appellant for further time for hearing. *Noted.* The defendant consents. L. J., XIV. 247.

74. May 3. Writ of Summons. (L. Howard of Effingham.)—Writ of Summons, dated 2 April, to Francis Howard de Effingham, Chr. [Took his seat this day. L. J., XIV. 200.]

75. May 11. *Lampen v. Cloberry*.—Petition and Appeal of Ezekiel Lampen, executor and residuary legatee of William Cloberry, deceased. Complains of a decree of L. Keeper Nottingham in 1677, confirmed in 1683 by L. Keeper North on a Bill of Review. Prays that the decree may be reversed and all proceedings stayed. *Signed* by Appellant; *Countersigned* Ambrose Phillipps and Samp. Ward. L. J., XIV. 208. The proceedings below are reported in *Freeman* ii. 24 and *Cases in Chancery* ii. 155. See also *Vernon* i. 324. [The Appeal was heard and dismissed on 12 June. L. J., XIV. 241. Counsel for the Appellant were *Sir Ambrose Phillipps* and *Mr. Tremaine* (cited *Dyer* s

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Rep. fol. 59). *Sir Francis Winnington* and *Mr. Finch* appeared for Respondent. MS. Min. 12 June.]

Annexed:—

(a.) 28 May. Answer of Oliver Clobery, administrator of the goods, chattels, rights and credits of Dorothy Clobery, his daughter, a minor. Respondent's father, who had an estate of about 12,000*l.*, left only 5*l.* to Respondent, but not from displeasure, as is alleged, but through the ill designs of Appellant, who sought to get the property for himself. Prays that the Appeal, which is vexatious, may be dismissed. *Signed* by Respondent; *Countersigned* H. Finch and G. Paunceforte.

(b.) 18 June. Petition of Respondent. Appellant, after his Appeal had been dismissed, served Petitioner with a protection signed by the Earl of Suffolk (copy of which is annexed), protecting him as his Lordship's menial servant, although Lampen is a merchant, and lives in town. The Earl being away from London, Petitioner cannot address his Lordship. Prays not to be abridged in his proceedings against Appellant. L. J., XIV. 247.

(c.) Copy of protection, dated 26 April, referred to in preceding, and annexed thereto. L. J., XIV. 247.

76. May 14. *Arnold v. Smith*.—Petition and Appeal of Richard Arnold, Gent. Sir Edward Smythe and Dame Frances, his wife, sued Petitioner and Henry Nourse in Chancery, setting forth that Petitioner's father had mortgaged certain lands to Nourse, and that Sir Richard Weston, Lady Frances' former husband, had purchased the redemption, and that she was entitled thereto, as devisee of Sir Richard's real estate. Petitioner brought a cross-suit against Sir Edward and his Lady and Anne Arnold, widow, and Nourse, and the Court, on hearing the two causes, decreed the redemption to Petitioner. Afterwards, Anne Arnold, though she had previously sworn that the conveyance to Sir Richard was a real purchase, brought a bill against Sir Edward Smythe and his Lady and Nourse and Petitioner to have the redemption of the lands from Nourse, and also a reconveyance from Sir Edward and his Lady, to which bill Sir John Guise, Bart., and William Guise were named parties, as trustees for her in a bond and judgment. In that bill she pretended that the reversion and redemption were conveyed to Sir Richard by Petitioner's father in trust for her, although no trust was declared in the conveyance, and the Court decreed in her favour. Petitioner claims the redemption and prays that the decree for Petitioner may be confirmed, and that for Anne Arnold reversed. *Signed* by Appellant. The signatures of Counsel, *Ch. Porter* and *Ri. Freeman* are copied on the Appeal. L. J., XIV. 210. [The Appeal was heard on 11 July; Counsel being the *Solicitor General*, *Mr. Ward*, and *Mr. Poulton*. MS. Min. 11 July; L. J., XIV. 275.]

Annexed:—

(a.) 22 May. Answer of Ann Arnold, Sir Edward Smith, and Dame Frances, his wife. Anthony, late husband of the Respondent Anne Arnold, was bound by his marriage settlement to leave her 2,000*l.*, and he gave a judgment of 6,000*l.* to Sir John Guise for performance. Afterwards, finding himself in debt, and having only the equity of redemption of some land mortgaged by him to Mr. Henry Nourse for 600*l.*, which equity was not worth 800*l.*, he settled the lands, subject to the mortgage, on Ann. The latter applied to Baron Weston, a friend of Mr.

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Guise, her former husband, to be her trustee, but he declined so to act unless he could have absolute power over the estate, and accordingly Ann and her husband, trusting him as a man of honour, made an absolute conveyance to him for 100*l*. Ann's husband and Baron Weston both died, the latter leaving by will his estate to Dame Frances his wife, and she intermarrying afterwards with Sir Edward Smith, brought a bill, at Ann's request, against Nourse the mortgagee and the Appellant, as heir-at-law, to redeem the mortgage, intending to convey to Ann upon her paying the 100*l*. and the money paid for the redemption. Defendant brought a cross-bill, and the Lord Keeper North decreed the redemption to him as heir-at-law, on the ground that the 100*l*. being less than the equity was worth, he must take the possession to be a security for the 100*l*. rather than a purchase. The conveyance to Baron Weston was fully understood by him to be a trust, and the Lord Keeper was satisfied that it was so, and his judgment was afterwards confirmed by Lord Chancellor Jeffreys. Appellant stands indebted to Ann, on the account, in the sum of 1,151*l*. 1*s*. 0*d*. as a condition of redemption, and, besides that, he holds 500*l*. profits. The Appeal is vexatious. *Signed* with Respondents' names, all in the same hand; *Countersigned* Geo. Hutchins and Edm. Jones.

- (b.) 15 June. Answer of Sir Edward Smith, Bart., and Dame Frances his wife. His wife's suit abating by her marriage with the male Respondent, the same was revived in both their names. Ann, in her evidence, swore that the conveyance to Sir Richard Weston was a real purchase for the consideration of 100*l*. Respondents' answer to the Bill in Chancery was prepared by Mr. Jones, a son-in-law of Ann Arnold. Sir Richard Weston never took the conveyance in trust for Ann, nor did Anthony Arnold ever intend a trust. Respondents' names have been added to Ann's answer without their knowledge or authority. *Signed* by Respondents; *Countersigned* by Nic. Corsellis and Geo. Pery.
- (c.) 15 June. Answer of Henry Nourse, Esq. Anthony Arnold mortgaged to Respondent certain lands for security of 600*l*., and Sir Edward Smith and Dame Frances brought a bill against him for the lands on pretence that Sir Richard Weston had really purchased the premises of Anthony, and had devised all his real estate to his wife Dame Frances. Recites further the proceedings below. *Signed* by Respondent; *Countersigned* Luke Astry and T. Gardiner.
- (d.) 21 June. Petition of Appellant for a day for hearing, and for production of Registrar's Minute-Book. L. J., XIV. 251.
- (e.) 28 Jan. 1691-2. Petition of Appellant. Prays their Lordships to explain their Judgment of 11 July 1689, affirming the Decree appealed from, so as to give effect to the intention of the Decree by compelling Anne Arnold, as well as Petitioner's father, to perform her part of the marriage agreement in question, the Decree not being expressly enough worded for that purpose. *Signed* by Appellant; *Countersigned* W. Williams and G. Pery. L. J., XV. 53. [On 6 Feb., Counsel being called in on this Petition, Mr. Ward (for Respondent) objects to the Order appointing Counsel to be heard. The Appeal was heard and dismissed in 1689. This is setting aside their Lordships' Judgment. The Decree in Chancery was signed and enrolled before

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the Appeal. *Sir W. Williams* and *Sir Thomas Powys* were then heard for Petitioner; after which the Speaker reported and the Petition was dismissed with costs. MS. Min.]

77. May 15. Bathurst's Estate Act.—Amended draft of an Act to enable Theodore Bathurst to make a jointure for his wife, and to raise daughters' and younger sons' portions and moneys for payment of his debts on part of his estate in Yorkshire. The Bill contains provisions for raising 4,000*l.* for portions for Theodore's daughters and younger sons, and enabling him to mortgage the lands. These provisions were struck out in Committee, and others inserted instead, giving effect to what John, Theodore's brother, agreed to. (See note to Annex *a.*) [Read 1st this day; Royal Assent 22 June. L. J., XIV. 211, 252. 1 W. & M. c. 38 in Long Calendar.]

Annexed:—

(*a.*) 27 April. Lords' Amendments to the Bill. [On 24th, Mr. John Bathurst, the next in remainder, said he agreed his sister might have a jointure, and that the reversion of the jointure and the estate at Langton might be charged with 2,500*l.* for paying the charges his brother had been at in defending the title. The Bill was ordered to be amended accordingly. Com. Book 24 & 27 May.]

78. May 16. *Jones v. The King*.—Petition and Appeal of Gaynor Jones, Widow, and William Cross, Gent., from a decree in Exchequer in 1688 against them at the prosecution of the then Attorney-General. Robert Charnock conveyed certain lands in Leyland, in the County of Lancaster, to Edward and Willoughby Manley and Richard Orrell in fee. Charnock and Willoughby Manley (Orrell having released his interest to Manley) conveyed the lands in 1660 for 500*l.* to Grace Bold in fee, to whom Charnock devised them by will, and who held them till 1686. Mrs. Bold levied a fine and declared the uses thereof to herself for life, remainder to Petitioner Jones, remainder to herself in fee, and by will in 1685 devised the lands to the Petitioner Cross for raising portions for his younger children, remainder to John Cross, his son in tail, with other remainders over, and in 1686 she died. Petitioner Jones then entered, whereupon the Attorney-General exhibited an information in Exchequer suggesting that Charnock had conveyed the lands to Grace Bold in trust for superstitious and unlawful uses, and that the lands were forfeited to the Crown. The Court, on 23 June, 1687, directed a trial on the issue whether the estate and conveyances were made or intended on any trust and what trust. Eleven of the jury at the trial were Papists, and by undue solicitation of one Goden, a Popish priest, who had obtained a promise of the grant of the premises if recovered and prosecuted Petitioners at his own charge, a verdict was obtained that the lands were conveyed to the use of Grace Bold for the support and maintenance of Romish priests in trust for the support of the Secular Clergy of the Romish religion in Lancashire. The Court of Exchequer thereupon decreed the lands forfeited to the King. Appeals against this decree, and prays that the Attorney-General may be ordered to answer. *Endorsed* as read this day, and laid aside, not having had a Bill of Review. MS. Min. No entry in L. J.

79. May 16. Arundel Ground Act.—Amended draft of an Act for building into tenements the remaining part of Arundel Ground as now enclosed. Almost identical with Act, save that the Rent of about 480*l.*, set apart toward building a new capital messuage, was in the original Draft to be applied to the payment of the Duke of Norfolk's debts,

instead of going to him and his right heirs of entail. [Read 1^a this day; Royal Assent 28 May. L. J., XIV. 212, 224. 1 W. & M. c. 29 in Long Calendar.]

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Annexed:—

(a.) 17 May. Lords' Amendments to the Bill. [Made in Committee this day. Com. Book.]

80. May 17. Court of the Marches of Wales Act.*—Petition of several inhabitants within the Principality of Wales on the behalf of themselves and other inhabitants within the said Principality. Pray to be heard by Counsel for the Bill now before their Lordships. Twenty-three signatures are subscribed. Read this day. L. J., XIV. 213. [The Bill for abolishing this Court was brought from H. C. on 29 April, and received the Royal Assent on 25 July. L. J., XIV. 195, 294. 1 W. & M. cap. 27. See also Calendar, 11th Report, Appendix, Part II., No. 354. Counsel were first heard at the Bar on 27 May. *Mr. Tremaine* opposed the commitment of the Bill, and prayed its rejection. Cites the statute of Rutland, *temp.* Edw. I. There would be a failure of justice, if a man removed out of the county. *Mr. Ward* and *Mr. Trevor* were also heard for the Bill, and *Serjeant Thompson* against it. There had been thirty prohibitions since Charles I. (MS. Min. 27 May.)—On 3 June, the statute 13 Car. II. concerning riots was read, as to the Petition of the Marches of Wales, presented on 1 June (Annex a), and after debate, the *L. Privy Seal* stated the case as argued by Counsel at the Bar, and after further debate, the Bill was read 2^a, and committed to a Committee of the Lords present that day, to take proof of the grievances mentioned by Counsel (MS. Min. 3 June. L. J., XIV. 231.)—In Committee, on 4 June, the promoters of the Bill are given time till the 11th to give proof of their grievances. (Com. Book, 4 June.) On the 11th *Mr. Ward* (for the Bill) says the Court is a great inconvenience to the people of that county. The judges of the Court were both judges of the fact and of the law. The foundation of the Court had no Act of Parliament for it. The grievances arose from the pretence and exercise of the jurisdiction of the Court. The multiplicity of the suits there, and the necessity of prohibitions at Westminster, was chargeable and grievous to the people. It was not a Court useful either to the King or people, but cost the Crown 3,000*l.* a year. *Henry Vaughan* (sworn): said there were abundance of small actions under 40*s.*; 4*l.* or 5*l.* costs were given, as, for instance, against Bromley, a maltster in Shrewsbury, for 15*s.*, and against another for 24*s.* The Plaintiff lived out of the jurisdiction. The Defendant had no remedy if the Plaintiff were out of the jurisdiction. Usually 4*l.* or 5*l.* were given for costs, sometimes more, though the damages were small. If a man were sued in two courts at the same time, no abatement was allowed in Ludlow Court. Upon a binding process (if after proclamation) the party must appear in person. The person taken was usually carried to the Lodge. They had no juries in that Court. They often held actions in battery, and had no jury. Their Commissions were sometimes executed by one Commissioner. The Solicitors or Clerks were commonly Commissioners, but not those that were in the same Cause. He had known injunctions granted to Court Barons, which were Courts of Record. He never knew any appeal from that Court to Westminster Hall. The way they copied was usually half the sheet; six words in a line. *Richard Vaughan* (sworn): said he lived 60 miles

* See The Case of the Lords Presidents of Wales and York in *Coke's Reports*, Part XII. 50., Vol. vi. p. 263 sqq.

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from Ludlow. He had been plaintiff and defendant in the Court. The Court admitted of all suits. He sued Walter Bowen, a minister, for cattle; he was dismissed to the Sessions, and was told by the Court that if he carried it there he should have 4*l.* 10*s.* costs. Walter Bowen was brought by a pursuivant to Ludlow. Witness was one term there when there were 120 actions, and not more than two above 40*s.* This was in L. Carbery's time. They gave above 3*l.* 10*s.* costs. He was a prisoner there, and was taken by a Bill of Stay, and he paid money for four *Habeas Corpus*s, and he could not have them allowed. Sir Francis Manley and Sir Kenrick Eaton, who were judges, told him it was to no purpose to bring a *Habeas Corpus*; the Defendant should have no costs. Witness never could get any when he was defendant. They had no juries. *James Probert* (sworn): said he was sued by Mr. Morgan Vaughan in that Court for a trespass of six sheep. The Court found 1*d.* apiece damage for the sheep, and witness paid 3*l.* costs. This was about 8 or 9 years since. The judge assesses the costs. Witness was at more than 4*l.* charges besides. There was no title of land then or now in question. *Griffith Davies* (sworn) said: Actions of trespass, damage, and small debts are usually brought there. In some terms there are more actions under than above 40*s.* He has known 6*d.* damage given, 10*d.*, 1*s.*, 5*s.*, sometimes 3*l.*, 3*l.* 10*s.*, or 4*l.* costs given for the plaintiff, besides his own charges. 4*l.* costs would be about 7*l.* charges. He knew Sir Richard Vaughan and others prisoners, and he had seen writs in their hands which they told him were *Habeas Corpus*, but they still continued prisoners. Mr. Ralph Winwood, the jailor, told him he was not obliged to obey any *Habeas Corpus*. Though they had Town Courts, Court Barons, yet this Court granted injunctions to them. The Defendants were usually dismissed without costs. One Jones, for an alehouse score of 40*s.*, paid above 80*l.* in the Castle. There lay no appeal from that Court to any others. *Pierce Reynolds* (sworn) said he had known several Prohibitions from the Exchequer. [Several prohibitions were produced.] Several of them have had no consultations upon them. In the Grand Sessions they had often a judgment the same Sessions charge about 16*s.*, 17*s.*, or 18*s.*; this in a small debt. The Equity of the Sessions was ambulatory. *Lewis Lloyd* (sworn) said he had a suit for a client in the Great Sessions, and had the cause heard the second Sessions. Suitors came 60 or 80 miles to the President's Court. He never knew any Writ of Error from that Court, nor any *Habeas Corpus* made. *James Forster* (sworn) said that, searching for Prohibitions in the Exchequer for about 3 or 4 years' time, he found 200 Prohibitions. He found very few discharged. *Rice Williams* (sworn) said he had known in actions of trespass and battery 6*d.* damage, 4*l.* and 3*l.* 10*s.* costs; and he knew in the cause between Rees and Williams 3*l.* 10*s.* costs, and no damage proved. When his master died, he found several of the original records in his study. He never knew any *Habeas Corpus* brought. In the cause between John William and William Thomas the record was lost. *Mr. Trevor* (for the Bill) said they had many more witnesses to the same purpose. *Mr. Clapham*, Secretary to the Court, said the King's Counsel were then in Guildhall, and could not attend, but desired another day.—Several members of the House of Commons, desiring to be heard, were then called in. *Sir John Wynn* said that land was two or three years' purchase the worse for their having this Court. *Mr. Vaughan*: We have it all in charge from the country to get this Court taken away, as being a great grievance. *Mr. Gwin*: This Court is more particularly oppressive to the poor people. The gentry usually bring Prohibitions. Several counties got

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themselves released by King Charles II. from pertaining to this Court. Their Actions are very inconsiderable—such as a hen flying into another's garden. The Grand Jury in several counties have presented this Court as a grievance oftener than once. *Mr. Vaughan* says he has had 2,000 voluntary subscriptions from gentlemen sent him against this Court. *Mr. Gwin* says all the gentlemen of his County have sent to desire this Bill may pass. (Com. Book 11 June.)*—On the 13th *Serjeant Tremain* (Counsel for the King) says an Appeal lies as much from this Court of Ludlow as from Chester, Durham, Lancaster, &c. to the House of Peers, but no Appeal lies from any of them to Westminster Hall. No process lies from the King's Bench into Wales. No Appeal lies from the Stannaries, nor from the Spiritual Court, to Westminster Hall. There have not been three Prohibitions in three years from the King's Bench or Common Pleas to the Court at Ludlow. It is within our instructions to give injunctions. The other side can name no one instance where costs were given where there were no damages. Cites 1 Croke, 557, *Seale's Case* (*sic*), and 2 Rolles, Title *Habeas Corpus*. *Habeas Corpuses* do lie there. *Serjeant Thompson*: In the Courts in Westminster Hall frivolous actions are frequently brought. A man has as much right to bring his action where there are but two pence damage as where there are more. This Court originally had a jurisdiction before the Statute of Union. In many cases there is a greater discouragement given to Plaintiffs, where they have appeared vexatious, than to the Defendant. We rarely grant Injunctions but when it appears on oath that they cannot have justice in the inferior courts. The expense of a Chancery suit there may be comprehended within 6*l.*, which in Chancery here will cost 120*l.* Cites *Wetherley v. Wetherley*, 3 Jac. 2 Rolles' Abridgement, Tit. *Habeas Corpus*. The reason *Vaughan's Habeas Corpus* was not allowed, was because the first was returned to the Bailiff, and the second to the Sheriff of Salop, neither of whom are officers of the Court. As to *Probert's* evidence, there may be a thousand instances brought from Westminster Hall where 3*l.* costs are given, where there has not been above 6*d.* damages. The Clerk of the Signet, exercising the office of the Sheriff, has a deputation from the Sheriff. There is always a day given to shew cause why a pursuivant should not go. In this Court of Equity the same course is taken as to Commissioners as in Chancery here. If one Commissioner will not appear, the others may act singly. *Mr. Roe* (for the Bill): By the course and practice of this Court a Commission may be executed by one Commissioner. *Mr. Trevor* (for the, Bill) opposes the examining the officers of the Court as witnesses. No man can be witness in a cause where he apparently gets by the Cause he swears in. *Mr. Ward* (for the Bill): This officer cannot possibly be a witness, for this is in his own case. If the Court be taken away he loses his office. *Serjeant Thompson*: We are but upon the manner of proceeding of the Court, and not on the right of the witness. After debate, on *Question*: Whether *Charles Chetwin*, being an Officer of the Court, can be examined as a witness, Resolved by 13 to 5 in the negative. *Mr. Edward Smalman*, being sworn and called as a witness against the Bill, Counsel for the Bill desire he may be asked first whether he will gain or lose by the putting down this Court. After debate, the Committee decide that he may be heard. *Mr. Ward* desires that *Smalman* may be asked whether he has not petitioned against the Bill, and procured others to petition against it. *Smalman* answers that he is a burgess of Ludlow, and he did petition

* On 12 June, L. Cornwallis reported to the House what was done by the Committee. MS. Min. No entry in L. J.

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the Commons against the Bill with the rest of the burgesses, and he did promote and solicit the getting hands to the Petition in the country. After debate, the witness (sworn) says that most ordinary causes may be brought about in three quarters of a year, and the charge to the Plaintiff is about 2*l.* 5*s.*; that to the Defendant is less. In his last year's practice he found on search that he was concerned in fifty causes of great value. Cites case of *Lort v. Lort*. Sometimes the Plaintiff had but a penny costs. The Defendant had often full costs. In a case of rescue, where there is a fine to the King, there are costs and no damages. A single Commissioner may act upon the refusal of the others to act. There is always an oath of partiality before there is a *Certiorari* injunction to the inferior Court. In a case of copying, in matters of importance, we pay 4*l.* a sheet; in small actions the officer has nothing. Witness can bring a cause to hearing in the Marches for 6*l.*, which he is confident he cannot bring in Chancery for 120*l.* Henry Vaughan was a prisoner in the Lodge, and was reputed a litigious person. Witness was concerned against him, when he denied on his oath his hand to a bond, when they proved the whole bond was of his writing. His writs of *Habeas Corpus* were not rightly directed. The Clerk of the Signet has a deputation from the Sheriff to make common returns. The Court does not always give time to shew cause why a pursuivant should not apprehend a party. The pursuivant had 2*s.* a day. They have no juries at all, but try all by English Bill. Witness has known several prohibitions and some consultations, as in Morris' case. The Court of Ludlow obeys a prohibition. He has known consultations 17 years ago, as in *Harris v. Harris*. In his own practice he never sent for a Prohibition but once, for one Thomas Williams, who was not acquainted here. Witness cannot say that the Clerk of the Signet is sworn as the Sheriff's deputy, but as an officer of the Court. There are many small causes in that Court. He has read the instructions often. *William Montague, Esq.* (sworn): Was in the Exchequer ten years. Does not believe that Prohibitions were so numerous in his time, as is now alleged. In debt they never granted Prohibitions; in trespass, battery, or scandal they granted them. If the cause were purely equitable, they never granted them. A Prohibition does not draw the business into the Exchequer. *Roger Newton* (sworn): Has been a clerk, but has not practised these two years. He has known many considerable actions there, as some for 200*l.* Instances *Seale* and *Barnaby's* case. Commissions are directed to one or more. The usual costs in Equity are 5*l.* or 6*l.*, in other cases 50*s.* The Sheriff's Deputy is not sworn but as an officer of the Court. *Mr. Smalman*: Never saw Queen Elizabeth's Instructions, nor does he know whether they are confirmed by King Charles' Instructions. *Serjeant Thompson*: This Court is established by the Statute of Henry VIII., and is a lawful Court and an ancient jurisdiction annexed to the Crown. The irregularities of the officers may be remedied by the President, and the Court not taken away. It is not in the President's power to appoint juries. *Mr. Roe*: This Court is in the same condition as the other inferior Courts. The King can shorten or restrain these Instructions, as he pleases. Several of the Welsh gentry have causes now depending in this Court. *Mr. Trevor* (for the Bill): The Statute 27 Henry VIII. provides that the subjects of Wales shall have the benefit of the English laws. The King cannot give Instructions now to proceed by jury. The Act 16 Car. I. has taken away the jurisdiction of this Court as to trying without juries. It is penal there to get a Prohibition. The Court sets higher costs on him if he move for a Prohibition. This Court will not obey a *Habeas Corpus*. *Mr. Ward*: This Court is unnecessary, because the subject

may be relieved elsewhere. It is against law to be judge both of law and fact. It is against law to give a Commission to one man alone. *Mr. Gibbs* (for the Bill): Writs of Error and Writs of Prosecution are the right of the subject. (Com. Book 13 June.) On 21 June E. Bedford acquaints the Committee that E. Macclesfield had sent to say he was ill of a fever, and desired the Committee might be adjourned. The Committee then amended the Bill and added a proviso (Com. Book 21 June); and the Bill was reported on the 28th. (L. J., XIV. 258. MS. Min. 28 June.)]

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Annexed :—

(a.) 1 June. Petition of several of the inhabitants of Wales in behalf of the inhabitants there. The Court held before the President is a great expense to the Crown and no advantage to it, and is oppressive to Petitioners, and different from all Courts in England. It is useless also, as the Court of Great Sessions answers all its ends. Pray that the Bill may pass. Annexed to the Petition are sheets pasted together, containing nearly 18,000 signatures from the various towns and parishes in Wales, each sheet being usually headed by the signatures of the Mayor and Aldermen, or of the Minister. Whole sheets sometimes consist of only the marks of the persons signing, or are written in the same hand, the consent of the illiterate persons whose names are signed by the Vicar being in some cases certified by him. In two cases the names are stated to belong only to heads of families. Twice the statement occurs, "If there be any exceptions, we are willing to come to a poll;" and these remarks also occur, "From plague, pestilence, and the name of Ludlow Court, Good Lord deliver us;" and "The inhabitants of Bigely and Wariston, whose names are subscribed herein, and many more who cannot write, do give their humble thanks to, and hearty prayers for, those Hon^{ble} members of Parliament who are for taking away the Court of Ludlow, many of them having been ruined by it." [Read this day. L. J., XIV. 230. See Note above.]

81. May 17. *Pilkington v. Bolsworth*.—Copy Writ of Error and transcript of Record, with tenor of judgment annexed. The Record states that Sir Thos. Pilkington, of Southwark, was sued by Edward Bolsworth, a perfumer, for having said, "You are a pitiful broken fellow, and are not able to pay your debts." The damages were 81*l.* 6*s.* 8*d.* [The Writ of Error was brought in this day. L. J., XIV. 213. For tenor of judgment see *ib.* 231. *In extenso*. The Appeal was heard on 3 June. *Serjeant Thompson* (for Plaintiff): Words must be by an averment, or else they are not actionable. Before the Statute of Bankrupts the words were not actionable. Cites cases of *Jackson and Lewes* and *Vicary and Barons* in 1 Rolles 61. *Mr. Polden* (for Plaintiff): If these words had been spoken of a merchant, they would have been actionable. A merchant may have 20,000*l.* owing upon credit; these words might break him. Cites case of *Slater v. Franks*.* *Plater's Case*, 5 Rep. *Serjeant Tremaine* (for Defendant): Cites 1 Rolles 61 and 1 Croke 317, 36 Eliz. *Serjeant Birch* (for Defendant) cites case in Rolles' Abridgment. Then, the *L. Privy Seal* having reported, *L. Chief Justice Holt* was heard, and said: He is of opinion that the words are actionable. To speak any words of a tradesman imputing bankruptcy are actionable. The declaration is well

* See Hobart's Reports, p. 126.

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framed. The jury may be attainted. The House then affirmed the judgment. MS. Min. 3 June. L. J., XIV. 231.]

Annexed :—

(a.) 24 May. Petition of Sir Thomas Pilkington, Knight, that Respondent may be ordered forthwith to join issue. L. J., XIV. 217.

(b.) 27 May. Petition of same for an early day for hearing. L. J., XIV. 223.

82. May 17. Droitwich Salt Works Act.—Amended Draft of an Act for the better regulating the Salt Works in Droitwich. The Draft, as amended, is identical with the Act. The chief amendment is the introduction of the last proviso saving the lesser or lower salt pits in Netherwich. [Read 1^a this day: Royal Assent 25 July. L. J., XIV. 213, 294. 1 W. & M. c. 46 in Long Calendar. In Committee on 31 May, *Serjeant Tremaine* opposed the Bill. It tended, he said, to take away men's inheritance. There was no occasion for the Bill; those that were the owners made byelaws. It tended to let in the Commoners among the owners. Relief, if necessary, could be had in Westminster Hall. The old law, that was in being, was sufficient. *Sir Charles Porter* (for the Bill): I am for 48 proprietors, Mr. Tremaine for only 14 of them. The Bill is no more than that we may have the government of our own estates. We had had judgment upon a *Quo Warranto*, but they prevented it by surrendering the Charter. *Mr. Ward* (for the Bill): We have a distinct interest in the soil as well as the water. We desire not to be let into the Corporation. We would but manage and govern our own Estates. Within 20 years they have raised 100,000*l.* upon these pits. We are distinct proprietors of distinct interests. They make their birth (*sic*) by birth, by election, by adoption. *Serjeant Tremaine*: We say there are 150 shares on our side. *Sir C. Porter*: The grant was not to the Corporation, but to the Burgesses.—On 3 June, *Serjeant Tremaine*: All the books make a difference between a Pit and a Bullary. *Mr. Ward*: They admit we have distinct interests. King John did not grant to them in a corporate capacity. A grant of a Bullary of Salt does pass the soil. We have a distinct interest that the Corporation cannot take from us. *Serjeant Thompson* (against the Bill): We had the grant from King John of the salt and the pits. *Dolben, J.*: This is a question which has been controverted in Westminster Hall, and I hope you expect not that I should speak presently to it. The Committee then ordered Counsel on both sides to attend before Mr. Justice Dolben before the next sitting.—On 6 June, *Dolben, J.*, who had heard both sides, gave his opinion that the soil passed by the grant. An ejectment, he said, had been brought in the King's Bench for a Bullary, which could not be if the soil did not pass; and it was agreed by both sides they do pass by livery and seisin. Counsel for the Bailiffs being called in, Mr. Justice Dolben's opinion was read to them. *Serjeant Tremaine*: We must submit to the Judge's opinion. *Mr. Ward* prays the Bill may pass, the law being with them. They desired not to govern the Corporation, but the shares of the water. *Serjeant Tremaine*: There is no provision in the Bill for the Fee-farm rent, for the School, etc. The *Lord Coventry* then offered a Proviso, which was read.—On 11 June, *Mr. Harris*, for the Bailiffs, intimated that they did not intend to proceed further in the matter of the Bill or Proviso. The Bill was then read, and ordered to be reported with Amendments. (Com. Book May 31, June 3, 6, 11. L. J., XIV. 240.)]

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83. May 22. Penwarne's Estate Act.—Amended Draft of an Act to enable Robert Penwarne to sell lands to pay his brothers' and sisters' portions, and also to pay debts. The Draft, as amended, is identical with the Act. The amendments are purely formal. [Read 1^a this day: Royal Assent 22 June. L. J., XIV. 214, 252. 1 W. & M. c. 36 in Long Calendar. Com. Book 27 May.]

84. May 23. Writ of Assistance. (Justice Rokeby).—Writ of Assistance, dated this day, to Thomas Rokeby, one of the Justices of King's Bench. *Endorsed*: "Received this writ 24 May about 11 of the clock."

85. May 23. Writ of Assistance. (Justice Eyre).—Writ of Assistance, dated this day, to Giles Eyre, one of the Justices of the Common Pleas.

86. May 24. E. Peterborough's Estate Act.—Draft of an Act to make good a Recovery suffered by the Earl of Peterborough and Lord Mordaunt. Identical with Act. [Read 1^a this day: Royal Assent 22 June. L. J., XIV. 217, 252. 1 W. & M. c. 37 in Long Calendar. Com. Book. May 31, June 3.]

87. May 24. Leather (Explanatory) Act.—Amended* Draft of an Act for explaining part of an Act made in the first year of King James the First concerning tanned leather [and for enabling the curriers to buy tanned leather and to sell it again curried]. The original draft, after a clause which forms § 1 of the Act, 1 W. & M. c. 33, the words "*and being well and truly curried*" being added as an amendment, concludes as follows, ["And to the intent that the Currier may have due encouragement, and be no further nor more strictly bound than other artificers or the necessary regard and commodity of his Majesty's subjects require, Be it enacted by the authority aforesaid That it shall and may be lawful from day of in the year of our Lord one thousand, six hundred, eighty-nine, for any Currier to buy in open fair or market leather tanned, and, after he hath curried the same, to sell it to any person whatsoever that shall work the same leather, and make it into other wares or transport the same, any clause in the said statute or any law or statute to the contrary in any wise notwithstanding."†] *Endorsed*: The Curriers' Bill.—[Read 1^a this day; Royal Assent 20 August. L. J., XIV. 217, 318. 1 W. & M. c. 33. The proceedings in Committee are thus recorded: 1 June. E. Rochester in the chair. Shoemakers' petition (Annex (a) below) read. All parties concerned in the Bill to be heard on 4 June.—On the 4th the parties called in. *Counsel for the Shoemakers*: We oppose curried leather being in the nature of made ware. By this means they would have the searching of all curried leather, which would much prejudice the country curriers, who are the better workmen. Prays the Bill may not pass. *Mr. Serjeant Lovell* (for Leathersellers): We are made a company. We have power to search, buy and sell, etc. We pray we may have the same benefit of selling as the Leatherseller. *Mr. Ward* (for the Curriers): We oppose not the Leathersellers having the power of searching as well as we, nor that the country Curriers be prohibited selling leather here, provided they be under the survey. *Mr. Phipps* (for Shoemakers): We will submit to the seal at Leadenhall. The Counsel then propose that if they may be suffered to meet together, they believe

* The additions are shown by italics, the omissions by square brackets.

† Here a clause forming part of § iii. (see Annex e) is marked to be added.

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they shall agree as to all these matters, and offer such amendments at the next meeting of the Committee as may make the Bill pass easy. The Committee ordered accordingly.—On 10 June, E. Rochester in the Chair, *Mr. Common Serjeant* (for the Curriers) said they had met to agree on a clause, but the clause which the Leathersellers would have added would destroy the Bill. *Mr. Serjeant Lovell* (for Leathersellers): It is as fit or fitter that we should sell than they; or else let the matter stand as it is without altering the law. *Counsel for Curriers*: We offer a remedy to the slow prosecution of the Act 1 Jac. I. concerning leather tanned, which is that which grieves these gentlemen. The Shoemaker has an advantage by working ill leather, as well as the Tanner hath by ill dressing. Curried leather is as much the made ware of a Currier as tanned leather is of the Tanner. If the Currier do his duty, then they will bring no work to us. We come now only for explaining the Act of 1 Jac. I. We pray that leather when curried may be reputed a manufacture. No artificer ought to be prohibited selling anything he manufactures. *Serjeant Tremaine* (for the Shoemakers): The Act itself in the 24th Section says that curried leather is no manufacture. The Shoemakers of London can use no leather but what is dressed by the London Curriers. There are a hundred shoemakers for one Currier. This Bill will oppress the Shoemakers. If the Currier may sell what he please, then he may curry as he will. Never was any leather seized by them for being ill curried. They send their seal to the Currier to seal his own leather. They have sealed no leather these twelve months. The House being sitting and sending for their Lordships, the Committee then adjourned.—On 25 June, *Mr. Common Serjeant* (for the Curriers) said: If curried leather be not the made ware of the Currier, it is not possible for us to obey the Act of 1 Jac. It is the Currier's interest that the leather be well wrought. It is his interest to perform his duty. The only thing we desire by this Bill is that curried leather be explained to be a made ware. The Act of 1 Jac. has been evaded by the craft of the Shoemakers. We desire the Statute may be explained for avoiding suits. *Mr. Phipps* (for the Shoemakers): The Act designed that one trade should be a check upon another, that every man may make good ware. Leather can be no made ware till manufactured by the Shoemaker. The Currier has power to search and seal made wares. They do not want power to search, but to buy it. *Serjeant Lovell* (for the Leathersellers): It is a judged case in Westminster Hall that curried leather is no made ware. The Statute did not intend a Currier should buy and sell. This Bill, if it pass, will be a repeal of the Statute 1 Jac. The Drapers may as well exclude the Clothier, as the Currier the Leatherseller. It is best for the people of England that all men have liberty to buy and sell, and the Shoemaker buy where he will. This Bill will destroy the ancient trade of the Leathersellers.—On the 27th *Serjeant Lovell* (for the Leathersellers) said: That this Bill may be for a common and public good, we shall offer a clause in writing, which we desire may be read. *Mr. Darnell* (for the Curriers): It is very irregular to offer such a clause. The clause is read. *Mr. Common Serjeant* (for the Curriers): We desire liberty to sell our own leather when curried. The Act 1 Jac. can never be executed by the Currier, for if he do, the Shoemaker, whose leather he has seized, will not employ him again. *Mr. Darnell*: There is no trade but the Curriers' that manufactures anything, but may buy to set themselves to work. They allow the Tanner may sell, who, no more than we, is the last manufacturer. The more buyers and sellers the better for the public. We exclude none by the Bill from buying and selling. *Mr. Phipps*: We oppose the passing of the Bill as it is. We

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cannot bring bad tanned leather to the Curriers, for they have the searching of it. We cannot have work but they must also have work, for we cannot have our leather curried by any but the London curriers. The consumption of leather will not be greater than it is now. The Curriers' seal is of no use to the public. They never seized any leather for being insufficiently curried. Of late they have sealed no leather at all. When they have sealed, the Warden does not, as he ought, seal it himself, but trusts the Currier himself with sealing his own leather. Let us be free buyers, without being subject to the Curriers' seal, and we agree to the clause offered. The Tanners and the Merchants of London trading in leather present Petitions against the Bill, which are read. Counsel for the Curriers say the clause offered is new to them; they desire a copy of it, and to be heard to it. *Ordered*, That they have a copy of the Proviso.—On 4 July, *Mr. Ward* (for the Curriers) says the clause offered by the Leathersellers takes away the Act 1 Jac. c. 22. The Leatherseller is a useless person in this matter. He is no artificer; he is out of the regulation of the Act of Parliament. The Leatherseller is a mere intruder into this trade.—On 6 July, the clause was further spoken to. *Counsel for the Tanners*: If Leathersellers be permitted to sell, they will ruin the Tanners. *Counsel for the Merchants*: Curried leather is not a made ware. This Bill will subject all leather, that shall be brought to London, to be searched by the Curriers. *Counsel for the Shoemakers*: If the Curriers be allowed to search, the Merchants cannot buy any country shoes, &c., but what will be searched. The Clause makes us subject to the search of the Curriers as much as the Bill. *Counsel for the Leathersellers*: None is so proper to be a retailer as the Leatherseller. It was the Leathersellers' invention that contrived the colouring of calves' skins, so that in that respect he may challenge the sole selling of leather. *Counsel for the Curriers*: We search none but those of our own Company. The Merchant may buy of the country Currier and not be disturbed if he do not send to the city Currier, to be better curried, the leather he has so bought. He cannot be disturbed for any leather he has bought of the city Currier, for leather cannot be searched after he has bought it. The Currier cannot be an ingrosser; he can buy no more than he manufactures. The country Currier, without the help of our Bill, cannot sell at all. We desire not to buy and sell as retailers; we would buy but to set ourselves to work. This Bill is as much for the advantage of the country Curriers as for us. Some leather is fit for use before it is curried.—On 9 July, *the Shoemakers*, being asked whether they sell leather, say that they sell to their poor brethren, as the Leathersellers do, but there is no law for it. The Committee then made the amendments to the Bill, and ordered it to be reported. Com. Book, June 1, 4, 10, 25; July 4, 6, 9.]

Annexed:—

(a.) 1 June. Petition of the Shoemakers in and about the City of London and Westminster. The Curriers have brought in a Bill for explaining an Act of James I., the meaning whereof they have wrested to their private interest and the damage of the public, and they would appropriate to themselves that which is contrary to experience and the laws. Pray to be heard by Counsel against the Bill. *Signed* J. Cray, Jonathan Newark, W. Savage, Jos. Saunders, John Chareckley. *Endorsed*: Petition of the Cordwainers of London and Westminster. [Read in Committee this day. Com. Book.]

(b.) 27 June. Petition of the Merchants of the City of London, buying Leather and transporting it beyond the Seas. The Bill

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will give the Curriers a monopoly of buying and selling curried leather. Pray to be heard by Counsel against it. *Signed* Reginald Heber, Thomas Legg, Nicholas Midy, De Bille, Bartholomew Midy. [Read in Committee this day. Com. Book.]

- (c.) 27 June. Petition of the Tanners in Southwark and other parts in and about the cities of London and Westminster. To same effect as preceding. *Signed* Henry Freeman, James Lowder, Wm. Lamme, John Bacon, John Heaton, and James Moore. [Read in Committee this day. Com. Book.]
- (d.) 9 July. Lords' Amendments to the Bill. [Made in Committee this day and reported on the 10th. Com. Book. L. J., XIV. 272.]
- (e.) 9 July. Clause forming § iii. of the Act, down to the word "Shops," after which it concludes thus, "and not otherwise, any law, statute, or other provision to the contrary in any wise notwithstanding." [Added in Committee this day. Com. Book.]

88. May 28. Absent Lords (Call of the House). — Answers to letter ordered this day to be sent by the Lord Speaker, M. Halifax, to E. Exeter, E. Clarendon, E. Yarmouth, D. Newcastle, E. Carlisle, and L. Conyers, who were found absent on the Call of the House on the 22nd,* directing them to attend on 6 June. (L. J., XIV. 225.) The letters are as follows:—

- (a.) 6 June (E. Exeter). Desires to be excused, owing to ill-health, sciatica, and very urgent affairs at home. *Holograph. Dated 4 June.* [Read this day. L. J., XIV. 234.]
- (b.) 6 June (E. Clarendon). Desires to be excused, having received an account of his own affairs in the country, which compels him to hasten out of town. *Holograph. Dated 2 June.* [Read this day. L. J., XIV. 234.]
- (c.) 6 June (E. Yarmouth). Desires to be excused, owing to ill-health and shortness of notice, the journey being above 100 miles, which is not generally gone under four days. *Holograph. Dated 3 June.* [Read this day. L. J., XIV. 234.]
- (d.) 8 June (D. Newcastle). Has received his Lordship's letter by Mr. Allen, the messenger. He is too weak to travel, and weaker than when his servant made oath to that effect at the Bar. *Holograph. Dated Wellbeck, 2 June.* [Read this day. L. J., XIV. 237.]
- (e.) 8 June (L. Conyers). Received his Lordship's letter only yesterday. Desires to be excused on account of weakness and indisposition. *Holograph. Dated Aston, 3 June.* [Read this day. L. J., XIV. 237.]

89. June 1. Writ of Summons. (E. Torrington).—Writ of Summons, dated 29 May, to Arthur, E. Torrington, introduced this day. L. J., XIV. 229.

90. June 1. Papists (Presentation of Benefices) Act.—Amended Draft of an Act to vest in the two Universities the presentations of Benefices belonging to Papists. The draft contains § i. and the final proviso in § ii. of the Act (Folio Ed.). The Lords' Amendments (L. J., XIV. 232. Com. Book 4 June) were to insert in § i. the date "first day of September" and to read "said first day of September" instead of "end of this present Session of Parliament." The Commons'

* L. J., XIV. 214. The Call had been ordered on the 17th, *ib.* 213. See also No. 97.

Amendments, which were agreed to by the Lords (L. J., XIV. 268), represent the other variations between this amended draft and the Act. They are set out in C. J., X. 202. [Read 1st this day; Royal Assent 25 July. L. J., XIV. 230, 294. 1 W. & M. c. 26.]

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91. June 4. Leather Exportation (Revival) Act.—Petition of the Shoemakers of Northampton. A very considerable part of the trade of the town has consisted, time out of mind, in the manufacture of boots and shoes, great quantities whereof have been sold abroad. Petitioners understand that a Bill is sought to be passed for the free transportation of unwrought leather beyond the seas. If the Bill pass, Petitioners' trade will be ruined, as the export of boots and shoes will cease, the same being then made abroad. Pray that the Bill may not pass. *Signed* Will. Wallis, Daniel Cockerell, Will. Randes, Nich. Stratford, Richard Howkes, Joseph Talor, Frs. Greenough, John Wallis, Will. Pheasant, Sam. Bradshaw, John Farr, John Hocknill, Tho. Johnson, Sam. Wickins. [The Bill, to which this Petition relates, viz^t. An Act for reviving two former Acts for exporting of Leather, was brought from the Commons on 31 May. (L. J., XIV. 227.) The Petition was read this day, and referred to the Committee on the Bill, being the same Committee as that on the Curriers' Bill. (L. J., XIV. 233; No. 87.) The Committee (L. North, Chairman), after reading this and the annexed Petition on 7 June, ordered to report as in L. J., XIV. 236. (Com. Book 7 June.)—On the 8th they reported the Bill with a verbal amendment (*ib.* 236. Com. Book 8 June).—On the 13th Counsel were heard, on third reading, at the Bar. *Mr. Phipps* (for Petitioners against the Bill): The King's customs will be lessened. On every hundred of not exported made wares the King loses 3s. 6d. As to trade, it is agreed leather is a staple commodity of this kingdom. It has been the care of your predecessors to take care of the Act 5 Eliz. c. 7. They are prohibited to be imported. Query, Whether this Bill tends to the impoverishing our artificer. 1 Eliz. c. 10, 5 Eliz. c. 22; 18 Eliz. The Parliament, seeing these remedies not suffice, made an Act 1 Jac.; 13 & 14 Car. II. Every hide exported makes 21 pair of shoes; and we give 1s. per pair, and so lose so many men's work. *Mr. Tremaine* (on the same side): Inconvenience to the King; there will be a great loss in the Customs. For every 100*l.* worth of leather wrought here is 300*l.* The law has made it but for a time. *Mr. Thompson* (for the Bill): As to former Parliaments, it is the wisdom of Parliaments to provide against inconveniences. The preamble of an Act recited. The King's Customs are of great weight; but it is but little in comparison with the advantage to the public. A great prejudice to artificers. The nation cannot expend the leather. As cloth, the benefit is exportation. Upon enquiry into the Customs, there is not less exported of made ware than seven men could work up. All the reasons and objections made are answered in reviving that Act, and that continues to this Parliament. *Mr. Danyell*: We have leather enough for our own use and to send abroad. There is a duty to the King upon the exportation of leather. Hides are transported where the manufacture is prohibited. The *L. Privy Seal* then reported the case as opened on both sides, and the Bill was read 3rd and passed. (MS. Min. 13 June; L. J., XIV. 242.) It was returned from the Commons agreed to on the 15th, and received the Royal Assent on the 22nd (L. J., XIV. 244, 252). 1 W. & M. c. 23.]

Annexed:—

- (a.) 6 June. Petition of the Company of Cordwainers of the City of London and also of the Liberties of the City of Westminster. After the Plague, Dutch War, and Fire the question was how

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to advance trade, and the French Merchants being glad of that opportunity, pretended the only way was to transport leather, and the then Parliament, not being used to that, suffered an Act to pass for seven years, for experience. But the effect of it was sad, for many manufacturers of leather went begging before it expired. Yet this is the precedent of some particular men to make a private interest to stand in competition with a public nuisance. Accordingly, some private men (not Tanners), about 4 years since brought in a Bill in the House of Commons for the exportation of unmanufactured leather, contrary to many penal laws for ages past, the duration of which Bill their Lordships reduced from seven to three years. Now also there are some private persons so eager to revive that Act, that a Bill has been brought in for that purpose, and Petitioners and others who petitioned against it had no hearing in the Commons. In particular a Petition from Bristol, sent to their representatives, was not delivered by them, which Petition signified that there are not 20 hides in or about Bristol in one tanner's yard to be sold, all of them being bought for transportation before they are half tanned, and lying in merchant's hands to be exported. Petitioners, having experienced the grievous effects of that Act by deadness of trade in most of the corporations in England, pray that the Bill for reviving it may be rejected, and that they may be heard before a Grand Committee. *Signed* Jos. Saunders, Wm. Savage, Jon. Charckley, Nicholas Capell, and Jonathan Newark. [Read this day. L. J., XIV. 234.]

92. June 4. Writ of Summons. (L. Ashburnham.)—Writ of Summons, dated 3 June, to John Ashburnham de Ashburnham, Chr., introduced this day. L. J., XIV. 233.

93. June 7. Oaths (Officers in Army) Act.—Amended Draft of an Act to regulate the Administration of the Oaths required to be taken by Commission or Warrant Officers, employed in their Majesties' service by land, by virtue of an Act made this present Session of Parliament, entituled An Act for the abrogating of the Oaths of Supremacy and Allegiance and appointing other oaths. As amended in C. W. H. by the addition of the concluding proviso, it forms *verbatim* the Act. [Leave to bring in the Bill was given on 6 June (MS. Min.). Read 1^a and 2^a and committed to C. W. H. this day: Royal Assent 25 July, L. J., XIV. 235, 294. 1 W. & M. c. 25.]

Annexed:—

(a.) 7 June. Draft proviso, being § ii. of the Act. [Added in C. W. H. this day. MS. Min. L. J., XIV. 235.]

94. June 7. D. Grafton v. C. Justice Pollexfen.—Petition of Henry, Duke of Grafton. Charles II. by Letters Patent of 2 Feb. 1684 granted to Petitioner for his life the office of Clerk of the Treasury in the Common Pleas and Keeper of the Records there, to commence after the death, surrender, or removal of Sir Thos. Jones, then C. Justice of the Common Pleas. Sir Thomas being removed in 1684, and Sir Henry Bedingfield put into his place, Petitioner was admitted to the office of Clerk of the Treasury and held it until it was seized from Petitioner's deputy by Sir Henry Pollexfen on being made Chief Justice of the Common Pleas. Prays for relief. *Signed* Grafton. L. J., XIV. 235. [In Committee for Privileges, to whom this Petition was referred (*ib.*), after a debate as to whether the

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L. C. Justice should stand when the Counsel came in, the Counsel were told at the outset (12 June) to keep close to the point whether the Duke of Grafton was in possession of the office, and whether his Grace had been dispossessed thereof in time of Parliament. *Mr. Finch* (for D. Grafton): The office was granted to the Duke by Patent from King Charles II. He was in possession of this office by the admittance of C. Justice Bedingsfield, and so continued till the present Chief Justice turned out his deputy, and that in the time of Parliament. *Mr. Holles* (for D. Grafton): It is no question in whose disposition the office is. This is an ancient office, which is as capable of possession as any land is. *Mr. Finch*: The Duke acquainted the Chief Justice with his title, but the latter turned out his deputy. Produces the Patent, which is read. The Duke was actually admitted by C. Justice Bedingsfield, and Mr. Tench, his deputy, has accounted to him ever since. *The Attorney General* (for L. C. Justice Pollexfen): This is not such an office wherein a man can have a freehold or estate. It is but a ministerial clerkship, and there can be no such possession as the other side allege. *The Solicitor General* (on same side): The Duke has but the same title that L. Berkeley had, which your Lordships in L. Berkeley's case in 1641 would not allow. *Sir William Williams* (on same side): The possession they have is not by the Grant. By the Patent, as often as there shall be a Chief Justice, he is commanded by King Charles II. to admit the Duke into possession. If the Duke's possession be determined by the L. C. Justice Herbert's removal, then the L. C. Justice Pollexfen has not dispossessed his Grace. When there comes a new Chief Justice there is an end of the possession. There is a new possession with every Chief Justice required by the Patent. The Clerk of the Treasury is but a servant to the Chief Justice. In Bedingsfield's, Wright's, and Herbert's time the keys were delivered up to each of them. *Mr. Finch*: Tench never delivered the keys to any Chief Justice. Neither Wright nor Herbert ever admitted him anew. *Mr. John Tench* (sworn): I was first in possession under Sir Thomas Jones. When Jones was removed I waited on the Duke of Grafton to Sir Henry Bedingsfield with a deputation his Grace gave me. My Lord showed his Patent to him, and I was approved of, and I delivered the keys to Sir Henry. I waited on the Duke to Sir Robert Wright, but I delivered no keys, nor did I see the Patent there. I waited on Lord Chief Justice Herbert, but did not deliver the keys. I received the profits all the time for the Duke of Grafton. I have heard Chief Justice Herbert say that the profits of right belonged to him, but he acquiesced in the Duke's receiving them. I paid the profits to the Duke with the allowance of C. J. Bedingsfield which belonged to his Grace, and I never asked the Chief Justice's consent. I took profits in the Duke's right, and the Chief Justices never objected to it. *Mr. John Cooke* (sworn): Being asked by Counsel for Pollexfen, C. J., what he had heard Bedingsfield, C. J., and Herbert, C. J., say concerning this paying the fees to the Duke's deputy; the parties are commanded to withdraw before the question is answered. Then it was proposed that when the Counsel come in they may be asked whether the D. Grafton has demanded a possession of this place and the profits thereof of C. J. Pollexfen, and the latter has refused it? This question not being insisted on, the Counsel are called in, and told the Committee do not think fit to ask the question put by the Solicitor General to Mr. Cooke. *Mr. Tench*: Q. Did the D. Grafton receive the fees of the office till C. J. Pollexfen came into the place of Chief Justice? A. Yes. Q. Does the Duke now receive the fees? A. The first day C. J. Pollexfen came

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to the Common Pleas, he came to the Treasury, and told me if I acted longer I must act for him. I acquainted the Duke therewith by Mr. Babington, who afterwards came to demand an account of me. I accounted to him to the 7th of May. Neither the Duke nor anybody else has received any profits since that day. Q. Has the Chief Justice forbidden you to pay the fees to the Duke of Grafton? A. Chief Justice Pollexfen told me I must account and pay the profits to him, and he would defend me.—They withdraw. The Counsel are called in again, and asked what they can say to the above questions. They say they are matters of fact, and they cannot say anything to them. *Mr. Michael Babington* (sworn): He went to demand the fees of Mr. Tench for the Duke, as also the keys, but he told him that C. J. Pollexfen ordered him not to do it, or to that purpose. *Mr. Tench*: I told Mr. Babington I could not account to him, because the Chief Justice had forbidden me. I told the Chief Justice that the Duke demanded the keys by Mr. Babington. He said "You have them for me: you must keep them." They withdraw; after debate, on *Question*, Whether the C. Justice Pollexfen, in ordering Mr. Tench to account to him for the profits of the place of Clerk of the Treasury of the Common Pleas, and not to the Duke of Grafton, in time of Parliament, has committed a breach of Privilege upon this House, *Contents* 13, *Not-Contents* 5. *Resolved* in the affirmative. Ordered to report accordingly. (Priv. Book, 12 June L. J., XIV. 242.)—On the 13th *L. Cornwallis* reported that the Committee found that the Duke was in the Office and continued so, and received the profits till Sir H. Pollexfen came and forbade Mr. Tench to account to the Duke. He stated the case as to what the Counsel said on either side. *Pollexfen, C. J.* was then heard upon the Report. This office of the Treasury of the Court of Common Pleas contains the Records wherein all the estates of all subjects are concerned. The Chief Justice is answerable for all Records. He stands at the stake. The Chief Justice is by the law to have the custody and care under him to act. I sent for Mr. Tench the first day. I said "This place belongs to me." It's my right, my claim. If I have done that which I should not, it is from my error and mistake. *D. Grafton*, being heard as to the enjoyment of it, says that the L. C. Justice put out two clerks; and he has admitted one. *Pollexfen, C. J.*, heard. He owns he has admitted Horsnell. They both withdraw. Then the House agreed that it was a breach of Privilege, and that the Duke should be in all respects in the same condition as he was in before C. J. Pollexfen came into office of L. C. Justice. (L. J., XIV. 242.) Then *Pollexfen, C. J.*, was called in and told that the House had debated and resolved this a breach of Privilege. "They are satisfied you had no thought you did it on purpose." He is told the Order. *Pollexfen, C. J.*, heard as to what he takes it they mean; he is heartily sorry anything he has now done is against privilege, and is very sorry for it. (MS. Min. 13 June.) For further proceedings see Annex (a) and notes.]

Annexed:—

(a.) 29 June. Petition of Henry, Duke of Grafton. Petitioner caused their Lordships' order of 13 June (L. J., XIV. 242) to be shown to C. J. Pollexfen, and left a copy with Mr. Edward Mills, his deputy, but no obedience has been given to it, and Mr. Mills still seals the records without Petitioner's deputy signing them. Prays that the parties in contempt may be ordered to attend. L. J., XIV. 261. [Read this day, and referred to the Committee of Privileges after the L. C. Justice and the Duke had been heard. The former said that Mr. Tench had

brought the keys to him. (MS. Min., and L. J., XIV. 261.) —In the Committee, on 3 July, *Sir Francis Winnington* (for D. Grafton) complained that Mr. Mills, the C. Justice's deputy, had removed the Seal to his Chamber. The Duke was thereby defeated of fees due to his Grace for his deputy's signing the records before Mills sealed them. *Mr. Finch* (for D. Grafton): We will prove this by several witnesses. *John Greene* (sworn): On Saturday sevensnight he was presented by his Grace to the Chief Justice, who said "I have heard your Grace, and have nothing to say to you." *Michael Babington*: I left a copy of the order with Mills. *Thomas Townsend* (sworn): I served Mills personally with the order of reference. *John Tench* (sworn): The Chief Justice required not the seal from him. He therefore delivered it to the C. Justice to whom it belonged. His reason was because two great persons were contending for the office, and he believed he might be troubled for the profits by both. The C. Justice did not send for him, nor did he ever speak to witness since the order was made. The Seal belonged not to the Duke. Witness accounted always to the Chief Justice for the profits of the office. The Seal belonged to him. Witness understood not that his signing was material to the making it a record. His signing was only a memorandum that the fees were paid. All the time he had known the office, the records were signed before sealed. He had known the office since 1633. His signing was no essential part of the Record. He believes the fees were due to the Duke, though witness signed not the Records. The Duke was at the charge of the parchment. *Richard Huggins*: Had known the Treasury ever since 1640, and the Records were always signed before sealed, because there was a fee due, and witness never knew but the seal and the office were kept together. *William Noys* (sworn): Had known the office ever since 1643. He had made up many hundred records. They were first signed; the seal was always in his time kept in the office. The signing and sealing, the management thereof, was always in one hand in his time. It would be a great difficulty for the Clerk of the Treasury to gather the fees after the Record was sealed. Witness never knew a Record sealed without signing. *Richard Middlemore* (sworn): Mr. Mills sealed four Records for witness at his chamber, which were not signed. He knows not whether Mills signed or had order to sign any. There was an order left in the office that Mr. Mills was to seal the Records. Mr. Mills, he believes, took notice what fees were due to the Clerk of the Treasury. In one of the Records he asked witness how many sheets it was. Witness knows not whether the Records were examined or signed. *Edward Parker* (sworn): He carried two Records to Mr. Mills to be sealed, which were not signed; but hearing that there was one at Gray's Inn that was concerned, he asked Mr. Mills whether he need not go thither. He said there was one Mr. Green, but that witness need not go to him, but if anyone asked him for fees, if they were due, witness must pay them. *George Phillips* (sworn): Mr. Mills sealed my Records, and he took my hand to a note. My Records were not signed. I heard him say that if anyone brought any records, he would seal them. *John Bentley* (sworn): So many records as Mills has sealed without signing, so many groats we, the six clerks of the Jurats, have lost. Mr. Mills told us if we came not to his office, we should be losers by it, for he would pass

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them without us. We did not go down. *The Solicitor General* (for C. J. Pollexfen) urged that his Lordship had neither said nor done anything in this business since the Order. Mr. Tench unexpectedly delivered the seal to his Lordship, who therefore could do no less than give the seal to another. Otherwise there would have been a delay of justice. There was a necessity for the Chief Justice putting the seal into some person's hand. The Duke's officer ought to have looked after his fees. *Sir William Williams*: The Chief Justice was not the cause of removing the seal; he was merely passive. The seal was delivered freely by Tench to his Lordship. Mills' book will be an evidence to the Duke, if we have disturbed his possession. *Mr. John Dolben* (sworn): He saw Mr. Tench in the Treasury the Monday before the end of the term, without his gown, when he told witness he was waiting for the Chief Justice coming to deliver up the seal. Witness asked him why so, and whether his Lordship required it? He said his Lordship did not, but he would not keep it, since there was a contest, and he might probably be called to account by both for the profits. When his Lordship came in, witness saw him deliver the seal to his Lordship, who seemed surprised at it, but said nothing. *Sir Francis Winnington* then replied and *Mr. Finch* summed up the evidence. They withdrew. [*Green* is called in and asked whether he offered himself to attend Mills to take account of the fees for signing the records.]* *Mr. Mills* (recalled) admitted having received a copy of the order of the 13th inst., and having since then sealed records unsigned. On the 24th the Chief Justice gave him the seal, Mr. Tench having then given it up. Witness then knew of no person being appointed to sign for the Duke. He never had notice that the Duke had appointed a deputy. He had sealed records unsigned. He took a note of all the records that passed, and would give the Duke an account if he pleased. He saw some records with *Green's* name to them, which he had sealed. Q. Did you apprehend the Duke was in the same condition after your sealing the records as he was in before the Chief Justice came to his place? A. He did apprehend he was so, for he took none of the Duke's money. Every Attorney was answerable to his Grace for the money. He thinks it is not the same thing to have his remedy against attorneys for the fees as to have their money. Being asked again, he said he did not take the Duke to be in the same condition he was in before Pollexfen was made Chief Justice. He begs mercy. The Committee then ordered to report as follows: "That the Petition of the Duke of Grafton being referred by the House to their Lordships to examine and consider whether the order made on the 13th of this inst. June concerning the office of Keeper of the Records in the Common Pleas has been observed by the L. C. Justice Pollexfen or not; That Mr. Tench, the said Duke's Deputy, delivered up the seal to the said L. C. Justice. That the L. C. Justice put the said seal into Mr. Mills' hand. That an order was set up in the office that the said Mills was to seal all Records. That Mills declared to the Attorneys he would seal the Records though not signed by the said Duke's deputy. That the said Duke

* These words in square brackets are struck through.

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"brought Mr. Green to the L. C. Justice, to know whether he
 "thought him a fit person for the signing the Records. That
 "the L. C. Justice would give him no answer thereto. That
 "the said L. C. Justice has made Mr. Mills his deputy, who
 "actually takes account of the fees for signing the Records,
 "whereby the L. C. Justice will have account of the said fees,
 "but the Duke of Grafton shall have no account by which he
 "can receive the same. That Mr. Mills himself owns he does
 "not take the Duke of Grafton to be in the same condition he
 "was in when Sir H. Pollexfen was made Chief Justice." The
 rest as in L. J., XIV. 268. (Priv. Book 3 July.)—Pollexfen
 was heard in the House on the 3rd July on the matter of his
 printed case (MS. Min. L. J., XIV. 266).—On consideration
 of the Report on the 4th, the Duke and Pollexfen were both
 heard, and, after debate, the Judges were asked whether, if the
 L. C. Justice obey the Order of this House, he was not abridged
 from the possibility of recovering the profits the Duke of Grafton
 shall receive? The L. C. Justice is not to give the order.
 Debate adjourned till to-morrow. (MS. Min. 4 July.)—On the
 5th the House read the orders of 28 March 1664 in E. Northum-
 berland's case, and of 20 May 1664 in L. Biron's case. 10 Dec.
 1667, Mr. Geo. Weldon servant to L. Vaughan. (MS. Min.
 5 July.)]

- (b.) 3 July. Petition of Richard Carter. Has been attached by
 order of the House (L. J., XIV. 261, 262) for not attending as
 a witness on behalf of the Duke of Grafton. Begs pardon and
 prays to be discharged. L. J., XIV. 268. [On 1 July *John
 Green* and *Arthur Hildersham* swore that Carter would not
 come to be sworn, but would attend on Wednesday (MS. Min.).
 The Petition was read this day, but "nothing done till after the
 hearing this afternoon." (MS. Min.)]

95. June 7. College of Physicians Bill.—Amended * draft of an
 Act for the better [establishing] *governing* the College of Physicians in
 London. Whereas [King Henry the Eighth by his Letters Patent
 under the Great Seal of England, bearing date the 23rd day of Sep-
 tember in the 10th year of his reign, did erect and constitute a College,
 Commonalty, or Corporation of Physicians in the City of London, and
 did thereby grant that the said College or Commonalty should yearly
 choose a President, and that the said President and College or Com-
 monalty should have a perpetual succession and a Common Seal for the
 benefit of the said President, College, or Commonalty, and their suc-
 cessors for ever, and did grant to the said President, College, or
 Commonalty and their successors divers powers, privileges, and liberties
 as well for the benefit and advantage of the said President, College and
 Commonalty, and their successors, as for the more certain discovery and
 suppressing of unskilful practisers in the faculty of physie, which said
 Letters Patent, and all and every grant and other thing therein con-
 tained and specified, were confirmed by an Act of Parliament made in
 the 14th year of the reign of the said King Henry the Eighth, and by
 the same Act certain new powers and privileges were granted to the
 said President, College, Commonalty, and their successors; And whereas
 by another Act of Parliament made in the 32nd year of the reign
 of the said late King Henry the Eighth intituled an Act for Phy-
 sicians and their Privileges, certain other powers, privileges, immuni-

* The omissions are shown below by square brackets, and the additions by italics.

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ties, and advantages were granted to the said President, College, or Commonalty and their successors; And whereas likewise by another Act of Parliament, made in the 1st year of the reign of Queen Mary, intituled An Act touching the Corporation of the Physicians of London, it was enacted that the said Act made in the 14th year of the reign of the said King Henry the Eighth, and every article and clause therein contained should from thenceforth stand and continue in full force and effect, and several other good provisions were thereby made and ordained] *notwithstanding the powers and privileges granted to the College and Commonalty of Physicians in London by King Henry the Eighth and his successors relating to the constitution thereof, it is by experience found that some further grants are necessary for the better government of the said College*; And whereas their Majesties are graciously inclined not only to give all due encouragement to the judicious and learned Professors and Practisers of the necessary and useful faculty of Physic, but also to take the most effectual care of the safety and health of their subjects; And whereas by reason of the increase of the number of inhabitants in and about the City of London, it is found expedient that the number of the Elects and Fellows of the said College or Commonalty should be increased; Be it therefore enacted etc. That the said President and College or Commonalty, by whatsoever name or names they now are or at any time heretofore have been called or known, shall for ever hereafter be and continue a Body Corporate and Politic to all intents and purposes whatsoever by the name of the President, College, or Commonalty of the Faculty of Physic in London, and by that name shall have a perpetual succession; [And that the said President, College, or Commonalty of the Faculty of Physic in London and their successors shall and may have, take, hold, use, exercise, and enjoy all and singular the gifts, grants, liberties, privileges, immunities, powers, and advantages, which by the said Letters Patent of King Henry the Eighth, or which by any Acts of Parliament heretofore made, were granted to the said President, College, or Commonalty, and which are not by this Act changed or made void, as fully to all intents and purposes as if they had been called or named the President and College or Commonalty of the Faculty of Physic in London in the said Letters Patent or Acts of Parliament respectively.]

And be it further enacted, That for ever hereafter the Fellows of the said Corporation or Body Politic of the President, College, or Commonalty of the Faculty of Physic in London shall not exceed the number of fourscore in the whole at any one time, and that there shall be for ever hereafter one President, one Vice-President, 16 Elects, 4 Censors, one Treasurer and one Register, who shall be chosen out of the said Fellows of the said College in manner and form as hereafter in this Act is directed.

And be it further enacted, That [*George Rogers, George Ent, Knt., Charles Scarborough, Knt., Thomas Witherley, Knt., Walter Charlton, Thomas Burwell, John Betts, Peter Berwick, Samuel Collins, Robert Brady, Thomas Millington, Knt., John Lawson, Humphry Brook, Henry Paman, Walter Needham, Richard Lower Charles Frasier, John Atfeild, John Downes, John Bidgood, Wm. Walgrave, Knt., Richard Griffith, Edmund Dickenson, Edward Browne, Josias Clark, Samuel Morrice, Richard Torless, Thomas Alvey, James Rufine, Edward Hulse, Richard Morton, Charles Goodall, Phineas Fowke, Andrew Clench, William Dawkin, Walter

* For the Clause A substituted here see Annex (e) below.

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Harris, William Briggs, William Stockham, Edmund King, Knt., Francis Bernard, Christopher Love-Morley, Walter Mills, Edward Tyson, Frederick Slare, Richard Darnelly, John Bateman, William Johnson, William Dawes, Thomas Gill, Richard Robinson, Lancelot Harrison, Thomas Palmer, Edward Baynard, Martin Lister, Robert Pitt, Richard Feild, Theodore Colladon, Richard Blackburne, Christian Harrell, Nathaniel Johnston, Robert Peirce, John Gordon, Knt., John Elliott, Robert Gray, John Ratcliff, John Harrison, Tancered Robinson, Richard Carre, Simon Welman, Charles Conquest, Ferdinando Mendez, Richard Smith, George How, Joshua Le Fevre, Thomas Walsh, John Hungerford, Edward Betts, Hans Sloan, Richard Blackmore, Doctors in Physic, shall be the present Fellows of the said College; And that the said Dr. George Rogers shall be the first and present President thereof, and the said Dr. Walter Charlton, the first and present Vice-President thereof; and the said Dr. George Rogers, Dr. George Ent, Knt., Dr. Charles Scarborough, Knt., Dr. Thomas Witherley, Knt., Dr. Walter Charlton, Dr. Thomas Burwell, Dr. John Betts, Dr. Peter Berwick, Dr. Samuel Collins, Dr. Robert Brady, Dr. Thomas Millington, Knt., Dr. John Lawson, Dr. Humphry Brook, Dr. Henry Paman, Dr. Walter Needham, Dr. Richard Lower the first and present Elects thereof; and the said Dr. Richard Griffith, Dr. Walter Harris, Dr. Richard Blackburne, and Dr. Nathaniel Johnston the first and present Censors of the said College; and the said Dr. Thomas Millington, Knt., the first and present Treasurer of the said College, and the said Dr. Thomas Burwell the first and present Register of the said College.]

And be it further enacted, That the present Fellows of the said College and so from time to time hereafter the Fellows of the said College shall continue Fellows thereof during their natural lives, unless for evil government or misbehaviour or non-residence (otherwise than whilst they are in the service of their Majesties or their successors) without License under the Seal of the College or for some other reasonable cause, they or any of them shall be respectively removed. And be it further enacted, That Dr. George Rogers, the present President of the said College shall be and continue President of the said College until the morrow of the Feast of St. Michael the Archangel in the year of our Lord 1689 and from thenceforth until another President shall be in due manner elected and sworn; And that the present Elects of the said College, and so for ever hereafter the Elects of the said College for the time being, shall continue and be Elects of the said College during their respective lives, unless they shall be respectively removed for reasonable cause as aforesaid; And that the present Censors of the said College shall be and continue Censors of the said College until the morrow of the Feast of St. Michael the Archangel in the year of our Lord 1689, and so from henceforth until some other Censors of the said College shall be in due manner elected and sworn.

And be it enacted, That for ever hereafter the President of the said College shall be yearly from time to time nominated and elected from out of the number of the Elects of the said College for the time being on the morrow after the Feast of St. Michael the Archangel or within six days next following by the greater number of the Fellows of the said College being present at such election, which election shall be in the Theatre of the said College, commonly made use of for anatomies and for the quarterly meetings of the said President and Fellows, and notice of the time and place of such election shall be given to all the Fellows of the said College for the time being; And every President so elected and duly sworn shall be and continue President of the said College until the morrow of the Feast of St. Michael the Archangel next ensuing

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such election, and from thenceforth until he or another President shall be duly elected and sworn in manner as aforesaid, unless he in the meantime for ill government, non-residence or misbehaviour in the said office, or other reasonable cause as aforesaid, shall be removed from the said office; And if any President shall be displaced or shall die before the morrow of the said Feast of St. Michael, the Fellows of the said College for the time being, having notice thereof, shall, within four days after such vacancy of the office of President, assemble in some convenient place as aforesaid, and shall then and there proceed to elect a new President out of the Elects of the said College for the time being in manner as aforesaid, by the greater number of the said Fellows then and there assembled; And the President then elected, being duly sworn, shall continue President of the said College until the morrow of the Feast of St. Michael the Archangel then next ensuing such election, and from thenceforth until he or another President shall be duly elected and sworn unless for reasonable cause he shall be displaced or removed as aforesaid.

And be it further enacted, That for ever hereafter the Censors of the said College shall be chosen from out of the number of the Fellows of the said College for the time being on the morrow after the Feast of St. Michael the Archangel or within six days next following, by the President and the greater number of Fellows of the said College being present at such election, in like manner as the Fellows of the said College are to proceed to elect a President upon the death or removal of any President; And that the four persons so from time to time yearly chosen Censors of the said College, shall continue Censors until the morrow of the Feast of St. Michael next after such election, and until they or other Censors shall be duly elected and sworn, unless in the meantime the said Censors or any of them shall die or shall be removed for reasonable cause as aforesaid, in which case the said President and Fellows, having notice thereof, shall proceed to a new election in such manner as the Fellows are to proceed in the case of the death or removal of the President.

And be it further enacted, That in case of the death or removal for reasonable cause as aforesaid of any of the present Elects of the said College, or of any who shall hereafter be Elects of the said College, the President and Elects for the time being, or any ten of them, whereof the President, or, in his absence, the Vice-President, to be one, shall and may assemble at their Common Hall or other convenient place in the City of London, and then and there elect and choose any of the then Fellows of the said College to be an Elect in the place of such Elect so dead or removed; who, being so chosen and duly sworn, shall continue an Elect of the said College during his life, unless he shall be removed for reasonable cause as aforesaid.

And be it further enacted, That upon the death or removal for reasonable cause as aforesaid, of any of the present Fellows of the said College, or of any who shall hereafter be Fellows of the said College, the President and Fellows of the said College, having notice thereof, shall at their next quarterly meeting proceed to make choice of some learned and able person skilled in the Faculty of Physic, then of the Commonalty or Members of the said College, to be a Fellow of the said College in the place of such Fellow so dead or removed, who being so chosen and duly sworn, shall continue a Fellow of the said College during his life, unless he shall be removed for reasonable cause as aforesaid.

And be it further enacted, That the present Treasurer and Register of the said College shall continue in there respective offices until the morrow of the Feast of St. Michael the Archangel 1689, and from thence until they or some other Treasurer and Register shall be respectively

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electd; And that for ever hereafter the Treasurer and Register of the said College respectively shall be chosen out of the Fellows of the said College at such time and in such manner and form, and shall have continuance for such time, as is hereby enacted touching the Censors of the said College; And every Treasurer of the said College, at or before his entering upon the office of Treasurer, shall give sufficient security to the President [of] and the College for the time being in the presence of *three* witnesses at the least, not being members of the said College, for the true performance of the said office.

And be it further enacted, That no assembly or meeting of the said Fellows for any the purposes aforesaid or any other the affairs and business of the said College, shall consist of fewer than twenty Fellows, whereof the President for the time being, or, in his absence, the Vice-President, shall be one; And also that the causes of removing any President or other officer or Fellow of the said College shall be heard in the assembly or meeting of the said Fellows only, and determined by the major part of the same.

And be it enacted, That the President of the said College for the time being may under his hand and seal from time to time nominate and appoint any one of the Elects of the said College to be Vice-President of the said College during the pleasure of the said President, who shall and may, in the absence of the President, do and perform the office of President of the said College.

And be it further enacted, That the Senior Elect then present shall administer to the present President an Oath that he will faithfully attend and execute the office of President of the said College in all things touching the same; And that for ever hereafter the Senior Elect present shall have power to administer the like Oath to every person being chosen President of the said College, before he take upon him the said office of President; And that the present President of the said College shall administer to the present Elects, Censors, Treasurer and Register of the said College respectively an Oath for their faithfully attending and executing their respective offices in all things touching the same; And that in like manner the President of the said College for the time being shall from time to time at all times hereafter administer the like Oath respectively to every person who shall be hereafter chosen an Elect, Censor, Treasurer, Register, Fellow or Member of the said College before they shall take upon them their respective offices or be respectively admitted into the said College or Commonalty.*

[And whereas several powers and authorities are given to or vested in the Censors of the said College for the time being by virtue of the said Letters Patents of King Henry the Eighth and the said Acts of Parliament, or some of them, which said powers and authorities, so heretofore granted, are hereby ratified and confirmed, Now, for the avoiding of all doubts and questions in that behalf, Be it enacted that it shall and may be lawful for the said Censors of the said College for the time being, by warrants under their hands and seals, or the hands and seals of any three of them, to summon any person or persons to be witnesses and give their testimony touching any offences, matters, or things touching which they have any power or authority as aforesaid, And to administer an oath or oaths to such person or persons to testify and declare his or their knowledge touching the said offences, matters, or things. And if any person so summoned shall refuse or wilfully make default to attend upon such summons (his reasonable charges being

* Noted here to insert Clauses B, C, D. See Annexes below.

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borne), or shall refuse to take such oath or oaths when tendered, that then every such person shall forfeit and pay to the President, College, or Commonalty of the Faculty of Physic in London, the sum of (blank) to be recovered by action of debt, bill, plaint, or information in some of their Majesties' Courts of Record, wherein no essoign, protection or wager of law, or more than one imparlance, shall be allowed.

And be it further enacted, that all and every physician and physicians, who now is or are, or hereafter shall be, elected and be a member of the said College, shall be exempt and discharged from serving or appearing on any jury for the trial of any matter or cause, or for the taking, finding, or executing of any commission or inquisition, and from being chosen constable, scavenger, churchwarden, or other such like parochial or other officer, ecclesiastical or civil, and also from keeping watch and ward in the City of London, or suburbs of the same, or within seven miles compass thereof.]—[Read 1^a this day (L. J., XIV. 235). In Committee, on the 29th, *Counsel for the Surgeons* desired to see the Byelaws made by the College of Physicians before they should be confirmed by this Act. *Counsel for the Bill*: We desire no more by the Bill than that we may be under such a constitution as that we may have 80 Fellows and 16 Elects. *Counsel for the Surgeons*: If you desire no more, we shall consent to the Bill. Only let us have a proviso that this Bill may not relate to the Surgeons or Apothecaries. If you leave out the confirming part of the Bill we desire no Proviso. *Counsel for the Bill*: We intend you no prejudice, and we agree to leave out the confirming part, and we waive the clause concerning administering an Oath, and we desire no confirmation of ancient Charters. *Counsel for the Apothecaries*: We are content the Physicians may upon oath be judges of the Apothecaries' bills. *Counsel for the Ancient Fellows*: Forty Fellows are enough to govern any Corporation in England.—Then the Committee, after making some amendments, ordered that the Physicians should propose some fit persons to be named Fellows in the place of those that were Papists, or so reputed, or were now impeached. A Proviso to be added that all the Fellows and officers take the test. The Physicians were called in, and told this, and they promise it shall be done, and also that no Fellows hereafter shall be admitted that have not been incorporated in one of the Universities.—On 3 July the Physicians offered a clause with the names of 80 Fellows instead of the clause in the Bill (Annex e), and a preamble and clause concerning taking the test (Annex g). Further amendments were then made. The clauses concerning the Fellows being incorporated in one of the Universities (Annex f), and the Fellows taking the test, were read. The Physicians were ordered to amend the latter clause so that the Fellows might be under a penalty if they refused the test, and the President under a penalty if he admitted a Fellow without his having taken it.—On 4 July, after further Amendments, the Committee ordered the Bill to be reported. (Com. Book, June 26, 29, July 3, 4; L. J., XIV. 268.) The Bill finally dropped in the Commons after a first reading.]

Annexed:—

- (a.) 12 June. Petition of the President and the ancient Fellows of the College of Physicians, London. Henry VIII. by his Charter incorporated the physicians of London, and their privileges were confirmed by Act of Parliament in the 14th and 15th years of his reign. Since then the Society continued in peaceable government until the time of James II., when Sir Thomas Witherley and others by threats procured a surrender of the Charter to the King, and though the surrender was not

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enrolled, a new Charter was obtained which destroyed their rights and privileges. Being advised that the new Charter was void, Petitioners about three months since, with others, caused a College to be summoned to settle themselves upon the old foundations; but the new members, some of whom are known Papists, together with some of the old ones, who contrived the surrender, opposed Petitioners, and kept possession of the College by force under colour of the new Charter, and endeavoured by Petition to the Commons to get their new Charter confirmed, which Petition, not being liked by the Commons' Committee, was withdrawn, as Petitioners are informed. Since then, the same persons who procured the new Charter, joined with the new Fellows, have procured a Bill to be brought into their Lordships' House, under pretence of better settling the College, in opposition to Petitioners' just rights, as well as the Universities. Pray to be heard against the Bill. *Signed* Geo. Rogers, President, John Lawson, Humphrey Brooke, Rich. Torless, J. Clerk, Rich. Fine, Rich. Morton, Edward Browne, Edward Tyson, J. Atfield, Jo. Downes, Thos. Alvey. [Read this day, and Counsel ordered to be heard for Petitioners. (L. J., XIV. 241.) On the 22nd, *Sir Francis Winnington* (for Petitioners) said there was a dissent against surrendering their charter. These persons would have it surrendered. There were two exceptions. They were about 30; by the Bill there was an establishment of 80; the number never exceeded 40 till of late. There was a clause to administer an oath, or on refusal, to pay a forfeiture. There never was such a Bill brought to set up such a power. *Serjeant Thompson*: The things *Sir Francis* insists on are fit to be struck out, such as sending for witnesses and swearing them, and he has advised his clients so to do. (MS. Min. 22 June; L. J. XIV. 252.)

- (b.) 25 June. Petition of the Master or Governor of the Mystery or Commonalty of Barbers and Chirurgeons of London, and the Assistants and other Members of the said Company. Petitioners were incorporated by Act of Parliament 32 Hen. VIII.; with power to practice chirurgery in all its parts. Their Company, after having governed themselves peaceably and without dependence on the College of Physicians, have lately been threatened by them, and a Bill has been brought in to the prejudice of Petitioners, who have always and are now obliged to provide Chirurgeons for the King's service on sea and land, which cannot be performed, nor can due care be given to people, if the Bill pass. Pray to be heard against the Bill. *Signed*, Thos. Gardiner, Thos. Lichfeild, Sam. Smith. *Endorsed* as dated. [Read in the House 22 June (MS. Min. No Entry in L. J.) Read in Committee on 26th and again on 29th. Com. Book of dates.]
- (c.) 26 June. Petition of the Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London. Pray to be heard before the Bill pass, which they are advised will prejudice their Company. *Signed*, Jas. Chase, Hen. Sykes, Thos. Fyge. [Read in Committee this day. Com. Book.]
- (d.) Lords' Amendments to the Bill. See Com. Book 29 June and 3, 4 July. They are shown in the text of the Bill above.
- (e.) 4 July. Clause marked A.—Names 80 persons to be Fellows of the College. Of the 79 names in the original Bill, the following 8 are here omitted,—John Betts, Sir William Wal-

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grave, Thos. Palmer, John Elliott, Robert Gray, Charles Conquest, Ferdinando Mendez and Edward Betts, and the following 9 new names are inserted,—Lucas Rugeley, William Burnett, Henry Sampson, Daniel Cox, Nehemiah Grew, Thos. Gibson, Robert Midgly, Peter Gelsthorp and Joshua Palmer. The names of Dr. Lucas Rudgly and Dr. Edm. Dickinson are substituted for those of Dr. John Betts and Dr. Robert Brady among the Elects. The Censors, Treasurer and Register are the same as in the Bill. [Ordered to be reported this day. Com. Book 3 & 4 July.]

(f.) 4 July. Clause marked B, as follows :—And it is hereby enacted and declared that no person or persons whatsoever shall for the future be admitted Candidate or Fellow of the said College unless he has first performed his exercise and taken his degree of Doctor in Physic according to the Statutes in one of the universities of Oxford or Cambridge, or having taken the degree of Doctor in Physic in some other University, can make it appear that he is incorporated in one of the said two Universities of Oxford or Cambridge, and has been a member of some University for the space of 12 years, any law, Statute, usage, or custom to the contrary thereof in any wise notwithstanding. [Ordered to be reported this day. Com. Book 3 & 4 July.]

(g.) 4 July. Amended clause marked C, as follows :—Provided always and be it enacted That the President, Fellows and Members of the said College or Corporation that now are, and all such as shall hereafter be admitted to be Fellows or Members of the same, shall *receive the Sacrament of the Lord's Supper according to the usage of the Church of England, and shall make and subscribe the Declaration contained in an Act made in the 25th year of the reign of King Charles II., intituled An Act for preventing dangers which may happen from Popish Recusants, and also take the Oaths mentioned in an Act of this present Parliament, intituled An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths ; That is to say, such persons as now are President, Fellows and Members of the said College shall receive the Sacrament and take the said Oaths, and make and subscribe the said Declaration in the High Court of Chancery or the Court of King's Bench, or at some Quarter Sessions, on or before the last day of Michaelmas Term next ensuing ; And all such Fellows and Members as shall hereafter be admitted into the said College shall receive the Sacrament and take the said Oaths, and make and subscribe the said Declaration in one of the said Courts or some Quarter Sessions on or before the last day of the first Term next after such his admission into the said College ; And if any President, Fellow, or Member of the said College, so already elected or hereafter to be elected or admitted, shall refuse or neglect to receive the Sacrament or to take the Oath that is above directed, but shall continue and act as President, Fellow, or Member of the said College, such said President, Member, or Fellow so neglecting or refusing, shall be and hereby is made incapable of continuing President, Fellow, or Member of the said College, and shall incur all the pains and penalties which any other person is liable to by either or both the above-mentioned Acts for neglecting or refusing to take the said Oaths or making and subscribing the said Declaration. [To be reported this day. Com. Book 3 & 4 July.]*

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(h.) 4 July. Clause marked D :—And be it enacted (for the better preventing miscarriages in the said Corporation, and for the better expediting of the affairs thereof) that a Committee, consisting of the President and 14 Fellows of the said College (whereof 5 to make a quorum), shall yearly be chosen by the majority of the Fellows at the same time and in the same manner that the President, Censors, and other Officers of the College are chosen, who shall meet as often as they think fit to consult concerning the affairs of the said College, and to report in their public assemblies what they shall judge may conduce to the welfare and interest thereof. [To be reported this day. Com. Book 4 July.]

96. June 8. Cornish's (Attainder Reversal) Act.—Amended draft of an Act for reversing the attainder of Henry Cornish, Esq., late Alderman of the City of London. Signed WILLIAM R. Identical with Act, except that the proviso, added by the Commons at the end of the Act, cancelling the record of the proceedings against Cornish, is here wanting. The two Amendments of the Lords are purely clerical. [Read 1st this day: Royal Assent 22 June. L. J. XIV. 237, 252. 1 W. & M., Sess. 1, c. 39 in Long Calendar. The Act is printed in *extenso* in *Howell's State Trials*, XI. 454. In Committee on 12 June, *John de Vinke* (sworn) deposed that Cornish was taken up on 13 Oct. 1685 and committed to Newgate, and tried as mentioned in the preamble of the Bill. *Sir Thomas Lane* (sworn)*: Rumsey swore that Cornish heard a treasonable declaration read at Sheppard's, whereas Rumsey had before sworn that he himself was not present at the reading the declaration, for it was read before he came in. *Oliver Smith* (sworn): Rumsey at L. Russell's trial denied that he had seen or heard the declaration read, though he swore at Cornish's trial that he was there. *Robert Fergusson* (sworn): Cornish was not present when anything called a declaration was read, nor heard one syllable of our discourse. *Sir Thomas Lane*: Rumsey swore Mr. Ferguson was in the room at the same time when Cornish heard the declaration. *John de Vinke* (re-called): Mr. Sergeant was the "material witness" mentioned in the preamble of the Bill. There were but ten days between the taking him in custody and his execution. The Bill was then ordered to be reported with amendments. (Com. Book 12 June.) Amendments agreed to *eod. die*. (MS. Min.) The entry is omitted in L. J.]

Annexed :—

(a.) Indictment, proceedings and judgment against Henry Cornish, late of the Parish of St. Michael, Bassieshaw, Merchant. Cut through, as cancelled, as enacted in the Act. A translation of the Indictment is given in *Howell's State Trials*, XI. 387.

97. June 8. Absent Lords (L. Griffin).—Draft orders of reference to the Committee for Privileges, (1) as to sending for Lords in custody, (2) to draw up an address for a Proclamation for summoning L. Griffin. L. J., XIV. 238. In *extenso*. [L. Griffin was among the Peers absent at the call of the House on the 22 May. (L. J., XIV. 214.)†—On the 24th the Lord President moved that notice may be taken of

* Cornish's witnesses were sworn at the Bar on 11 June, MS. Min.

† Notice of his absence had been taken on 22 March, when the House ordered him to attend on 3 April. (L. J., XIV. 158.) On 8 April, Sir T. Duppa, Black Rod, informed the House that the messenger had been to L. Griffin's house, and was told that L. Griffin had not been there for three weeks. (MS. Min.)

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the Lords who were absent on the 22nd, that care may be taken; and that the List of absent lords be brought in who are not excused nor proxies (MS. Min.).—On 27th the House was moved that the Judges may give their opinions as to what punishment may be on those that do refuse to take the Oaths, and what way or method may be taken to send into the country to have them taken. As the law stands now, what may be done to a Peer that does not take the Oaths? How the law stands? *L. C. Baron* heard to the penalties the Act enjoins. He speaks to the rules of Common Law. If in an Act there are no penalties, then he must be fined and imprisoned. *Dolben, J.* As to the time &c. The Acts set the time. *Gregory, J.* heard. A List of those lords that have not taken the Oaths nor have been excused was read twice. The House after this ordered the messenger who took the order of summons to *L. Griffin* to attend the next day. (MS. Min. 27th May. L. J., XIV. 223.)—On the 29th an Order to attach *L. Griffin* was made (L. J., XIV. 224).—On 8 June, the messenger *Henry Allen* (sworn) deposed that he left his son to enquire after *L. Griffin*, and could not hear of him. His son delivered the Order to the Steward, who gave him a receipt (MS. Min. 8 June). Then the above orders were made.—On 26 July, on debate of the Report from Committee for Privileges (see Annex *a*)* it was moved that His Majesty be desired to issue out a Proclamation for summoning *L. Griffin* by a day certain, and a Committee, to draw a Bill for the summoning *L. Griffin* by a day, was proposed to be appointed, consisting of *D. Bolton*, *L. Steward*, *E. Macclesfield*, *E. Stamford*, *V. Newport*, *L. Delamer*, *L. Wharton*, *L. Ossulston* and *L. Paget* (MS. Min. 26 July. L. J., XIV. 295).—On 27 July, after a resumed debate, the House appointed a Committee† to prepare an Address for a Proclamation (MS. Min. 27 July. L. J., XIV. 297).—On 3 August the Address was read and ordered to be presented to the King, whose Answer was reported on the 5th (L. J., XIV. 303, 304).—On 19 Oct., the Speaker having reported that *L. Griffin* had surrendered himself to a Secretary of State and was at the door, *E. Nottingham* produced his bonds for his appearance, dated 18 Sept. 1689. *L. Griffin* being called in, the Speaker acquainted him that he had entered into the Bonds to his appearance in the House, and by his appearance they were ready to be delivered up, and he knew what he was to do, and the bonds were given him. *L. Griffin* desired some time to consider of taking the oaths; he was not prepared for it (MS. Min. 19 Oct. L. J., XIV. 320).—On 6 Nov., the House being informed by the King that *L. Griffin* had been detected in correspondence with the King's enemies, and was committed to the Tower, agreed, after debate, to adjourn the matter till the next day (MS. Min. 6 Nov. L. J., XIV. 332), when an Address was ordered, thanking the King and asking that the grounds of *L. Griffin*'s commitment might be communicated.‡ (MS. Min. 7 Nov. L. J., XIV. 333).—On 9 Nov. the following papers§ were read; (1) Information of *Thomas Taylor*, a pewterer (2) Examination of *Mr. Clifford*, of *Gray's Inn*; (3) and (4) Two letters for a discharge of what was due to his Majesty as to his office. The second letter is believed to be *L. Griffin*'s own. (5) Warrant of Com-

* The record of the proceedings in Committee for Privileges on 19 June (Priv. Book) adds nothing to what is contained in this Report.

† The proceedings of this Committee are not found recorded.

‡ An order was made also respecting the hearing of Peers, on their Petition, concerning their commitment. L. J., XIV. 333.

§ These papers are not among the records. They were delivered back on 8 Jan. 1689-90 to *E. Shrewsbury*, Secretary of State, the King having directed a prosecution. L. J., XIV. 406. For the story about the pewter pot, see *Ralph*, ii. 187 note.

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mitment. The House is acquainted that the Lady Essex Griffin was committed also upon the examination of William Burton. (6) Letter directed to the King, without name; (7) Another letter, directed to the King; (8) Another letter, dated 22 Oct.; (9) Another letter, signed Thos. Glynn; (10) Another letter, directed to Capt. Cony in the Duke of Berwick's regiment. *Ordered*, That L. Griffin be brought to the Bar on Monday next at 10 a.m., and that he be acquainted that he is accused of high treason in keeping correspondence with the King's enemies, and to ask him what he has to say for himself (MS. Min. 9 Nov.; L. J., XIV. 335).—On 11 Nov. L. Lucas having informed the House that L. Griffin was at the door, a debate arose whether L. Griffin should kneel when he is brought in. *Agreed*, he shall kneel, and be told that the King has acquainted the House that he stands committed to the Tower. *L. Griffin* being brought to the Bar and having kneeled, the Speaker acquainted him that "the Lords having taken notice that you are committed for high treason, and you being a Peer of the realm, they have sent for you." *L. Griffin* said: "I think the warrant is not for high treason." The warrant of commitment is read. He is told by the Speaker that he presumed it did amount to high treason. *L. Griffin* says he submits to their Lordships. He knows nothing why he was committed, nor the occasion of it from the beginning to the end. He withdraws. The House acquainted that L. Griffin desires he may be bailed. The remaining proceedings as in L. J., XIV. 337* (MS. Min. 11 Nov.).—On 12 Nov. a letter† read, dated 20 Oct. and sworn by Thos. Hall to be in L. Griffin's hand. *Question* asked of the Judges: Whether the testimony of one witness is a good ground of commitment? *Pollexfen, C. J.*: One witness is enough to commit. Cause of suspicion is enough. If there is reasonable ground and cause to suspect, the person must be committed. If there is great ground and cause of suspicion, there is good ground to commit. *Dolben, J.*: Is of the same opinion. The law has taken care he shall not lie long. This is only in order to safe custody. But in a great presumption it is common to commit. *Gregory, J.*: Conceives one witness or presumption is ground of commitment. All the other Judges of the same opinion. The House then ordered L. Griffin to be committed to the Tower. (MS. Min. 12 Nov. L. J., XIV. 338.)—On 5 Dec., after reading L. Griffin's Petition to be bailed (Annex (b) below), the House, before making the order allowing it, heard the Judges on the question whether bail might be taken for high treason. *Holt, C. J.*: It is in your Lordships' discretion, for we can do it in the King's Bench. (MS. Min. 5 Dec. L. J., XIV. 360.)]

Annexed:—

- (a.) 26 July. Draft Report of Committee for Privileges as to an Address for summoning L. Griffin. L. J., XIV. 295. *In extenso*. [Ordered to be made 19 June. Priv. Book of date.]
- (b.) 5 Dec. Petition of Edward, L. Griffin. Petitioner is truly sensible of and sorry for the misfortune of lying under their Lordships' displeasure, which he could remove, if heard. His present confinement is not only very chargeable, but also extremely prejudicial to his health. Prays he may be bailed. L. J., XIV. 360.

* The MS. Min. contain, however, an Order, not in L. J., that "those Lords that are present at 10 o'clock do proceed in the business of the day, if there be but seven." (MS. Min. 11 Nov.)

† The letter is given *in extenso* in L. J., XIV. 337.

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98. June 8. Sir J. Mill *v.* Noy and others.—Petition and Appeal of Sir John Mill, Bart. Henry Sandys, Esq., who died in 1644, charged some of his lands not entailed with portions of 1,000*l.* for each of his five younger daughters. The lands were sold after his death, but, after paying off the debts upon them, only 500*l.* apiece was left for the daughters, which they received from the trustees appointed to sell. His three sons, William, Henry, and Edwin, each of them Lord Sandys, inherited in succession, and Edwin, dying in 1684 without issue, left his nephew, the Petitioner, his heir. Thereupon Respondents, after contesting Edwin's will, which was upheld on a trial at law, sued Petitioner in Chancery, claiming 60*l.* for Hester Noy and the residue of the 1,000*l.* for each of her five sisters, as legacies under a pretended will of their father, and a further legacy of 200*l.* apiece, under a pretended will of their brother William. The L. Chancellor Jeffreys on 28 June 1687 decreed in their favour, making Petitioner liable for a sum of 4,145*l.* It is against all presumption that the portions should have remained so long unsatisfied, without any demand made against Petitioner's three preceding executors, the last of whom died forty years after the death of the first testator. The decree directed no enquiry as to assets, and, to obviate this defect, was drawn up as having been made on Petitioner's submission; but he never submitted, though sharp courses were taken by Jeffreys to press him thereto. Prays for relief against the decree. Signed by Appellant, and countersigned by W. Williams and Jo. Nowes, as Counsel. [Lodged 2 June (MS. Min.) and read this day. (L. J., XIV. 237.) Appeal heard 9 July, *ib.* 271. Mr. Ward (for Appellant): Respondents seek to set aside Lord Sandys' will. A decree tacked upon him to pay portions. The subsequent will had no effect with us. Mr. Nowes (for Appellant): Henry L. Sandys by will appoints 1,000*l.* each for portions. In 1644 he dies in debt. In 25 years he was never questioned for these portions. Edwin L. Sandys; 14 years no claim; in 1684 L. Edwin dies. In 1685 they prefer their Bill. Sir J. Mill never submitted to L. Jeffreys' decree. Sir Ambrose Phillipps (for Respondents): There was a full consent. The will made in 1641 was concealed, and we have proved it. We discovered the will in 1687. Edwin L. Sandys gives us nothing but 5*l.*; and on being asked by the L. Chancellor if he would make it up to 1,000*l.*, he desired time to consider. Reads that part of the Decree. He has paid the money and takes the release. Sir John Trevor (for Respondents): Sir J. Mill has enrolled his counterpart of the deed. They read the confirmation of the estate to Sir J. Mill. Counsel for Appellant having replied, the Speaker reported, and the Appeal was dismissed. MS. Min. 9 July. L. J., XIV. 271.]

Annexed:—

(a.) 13 June. Answer of Hester Noy, widow, Alatheia Gofton, widow, Jane Harris, widow, Dame Margaret Mill, widow, both in her own right and as executrix of Dame Margery Fortescue, deceased, and Henry Savage, son and heir of Mary Savage, his mother, all sisters and co-heirs of Edwin, late Lord Sandys, deceased. Respondents' father Henry Sandys Esq. was, in the lifetime of his mother, Lady Sandys, killed in Cheriton fight in the service of Charles I., leaving four sons (one of whom, Miles Sandys, died in his apprenticeship to a merchant) and eight daughters. By his Will in 1641 he devised all his estate to his eldest son William, charged to pay portions of 1,000*l.* to each of his daughters except the eldest Hester Noy, to whom he left but 10*l.* as a legacy, she having had 2,000*l.* as her marriage portion. The will was concealed by William, who became Lord

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Sandys on the death of his grandmother, and also by Henry and Edwin, who succeeded him as heirs to their father's estate. But it was produced and proved in Chancery, and at last admitted by Appellant's Counsel. Appellant has had ample time given him by the Court to pay the 4,145*l.* found due. Pray that the Appeal may not be retained. *Signed* by Alatheia Gofton, Ja. Harris, M. Mill, and Henry Savage. Counsel's signatures copied hereon are those of Ambrose Phillipps and Lu. Robinson.

(b.) 26 June. Petition of the Respondents, that their Answer may be read and the Appeal dismissed, the Appellant not having taken any steps to have the matter heard. L. J., XIV. 255.

99. June 11. *Roffey v. Hinton*.—Petition of John Roffey, Senr., and John Roffey, Junr., of St. Clement Danes, Vintners. In 1681 the elder Petitioner became bound as surety with and for Durant Jenkinson to Wm. Dalton in 400*l.* for payment of 200*l.* and interest, in two instalments. The first 100*l.* becoming due, Dalton threatened to arrest the elder Petitioner, who went to Jenkinson, and was told by him that if both the Petitioners would become bound to Benj. Hinton, a goldsmith, the latter would pay the 100*l.* Petitioners accordingly gave a bond to Hinton, who, having large accounts open with Jenkinson, as Petitioners afterwards discovered, refused to pay Dalton according to his promise, and obtained judgment against Petitioners on the bond. For relief against this fraud, Petitioners brought a bill against Hinton and his Assignees, and the Master of the Rolls decreed in Petitioners' favour. But on a rehearing the L. Chancellor Jeffreys* ordered Petitioners to pay principal, interest, and costs, and their goods were afterwards taken in execution. A suit was then pending in Chancery between Jenkinson and Hinton and his Assignees in Bankruptcy for a settlement of accounts, and it appeared, on reference to a Master, that Petitioners' money was never intended to be brought into Hinton's account, but was designed to pay Dalton; and the Master, therefore, refused to credit Jenkinson therewith, so that Defendants have Petitioners' money for nothing. Appeal against the Decree, and pray that Hinton and his Assignees in Bankruptcy may be ordered to answer. *Signed* by Appellants, and *countersigned* Geo. Bradbury and J. Baggs. L. J., XIV. 240. [Appeal heard and dismissed 3 July, *ib.* 266. *Mr. Bradbury* and *Mr. Ward* appeared for Appellant. *Mr. Hildyard* (for Respondents): *Mr. Hinton* swears positively he never promised to pay the money. He swears he knew no money due. They object that they never examined one witness in this cause. *Mr. Constantine* was also heard for Respondents. The Lord Privy Seal, after argument, stated the case. MS. Min. 3 July.]

Annexed:—

(a.) 21 June. Answer of John Hill, Obadiah Sedgwick, Anthony Ward, Reginald Heber, and Benjamin Hinton. The matters in Appellants' suggestion as to the suit between Jenkinson and Hinton are not in proofs or pleadings of the Appeal, and are wholly foreign thereto. Pray that the appeal may be dismissed with costs, as vexatious. *Signed* by Respondents, and *countersigned* Edw. Hildyard and C. Constantine.

100. June 11. Popham's (Illegitimation of Children) Bill.—Draft of an Act for the illegitimation of four of the children of Brilliana Popham, deceased, late wife of Alexander Popham, of Burton, in the

* See *Modern Reports*, III. 35.

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County of Gloucester, Esquire. Alexander Popham, of Burton-on-the-Hill, married in 1679, and for four years after his marriage, while he and his wife Brilliana lived in her father's house, she demeaned herself virtuously, and had a daughter, Anne, to her husband. But they went to live at Burton in 1683, and Brilliana then refused conjugal society with her husband, and committed adultery with Thomas Rutter, Esq., of the same town. On her deathbed, in 1688, she confessed before Dr. Kimberley and Dr. Gibbons and the said Thomas Rutter that the four children younger than Anne, namely, Mary, Letitia, Brilliana, and Edward, were Rutter's, and desired him to provide for them. Rutter had settled 2,000*l.* upon them, and was bringing them up. The Bill enacts that these four children shall be considered illegitimate, shall assume the name of Rutter instead of Popham, and shall have no claim on the property of Alexander Popham, of Edward Popham his father, or of Sir Francis Popham his grandfather, nor any claim under Alexander Popham's marriage settlement,* which vested in trustees 4,000*l.* for Alexander's daughters and younger sons, and 4,000*l.* for his sister Letitia, Lady Bawdon, relict of Sir John Bawdon, late of London, Merchant, and their daughters Anne and Letitia Bawdon. All the property, including the Manor of Burton-on-the-Hill, the advowson of the parish church, and the property in Morton Hindmarsh, in the County of Gloucester, are to be vested in Thomas Harley, Robert Harley, Nathaniel Stevens, Francis Gwynn, and Edward Ash, as trustees, to be sold for payment of Alexander's debts, the residue, together with the 4,000*l.* under the marriage settlement, to go to Anne after her father's death, the interest of this latter sum being paid to Alexander during the joint lives of himself and his mother Lady Wharton. L. J., XIV. 240. [On 26 June, after hearing counsel, *Sir W. Whitelocke* for Popham and *Mr. Freeman* for Rutter, the House took the evidence of the two doctors, who stated that Rutter had declared that without confession there was little hope of pardon, and that Mrs. Popham had then confessed, and wished her father, Sir Edward Harlow, to be told, as she had often denied to her father and relations. The House rejected the second reading by 24 to 19, the respective tellers being E. Rochester and E. Bridgewater. *Ib.* 254 and MS. Min. 26 June.]

Annexed:—

- (a.) The Proviso dealing with the marriage settlement, to be added to the Bill.
- (b.) Clause settling the residue of the property on trustees for Anne, instead of on Alexander, as originally drafted in the Bill.
- (c.) Breviate of the Bill.

101. June 15. State of the Nation.—Draft order appointing a Committee to draw up an Address (1) for the Garrisons to be put in repair; (2) for disarming Papists; (3) for enquiring into Miscarriages in Ireland. L. J., XIV. 244–5. *In extenso*. [The House went into Committee this day, pursuant to order of the previous day, to consider the state of the nation, in relation to the Papists and the French King. (L. J., XIV. 243, 244.) E. Bridgewater in the Chair. House *moved* concerning the securing the Isle of Wight and Dover against the French. Ireland cost a vast treasure of blood and money; it had been

* The parts about the marriage settlement and about the residue are in separate papers. See Annexes *a* and *b*.

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so neglected. The Papists behaved insultingly in the Kingdom. *Proposed*, That all French Papists (except such as the King thinks fit) may be banished the Kingdom. *Moved*, concerning Ireland and the setting Militia and securing the Kingdom against the French King: To lay before the King the necessity of expedition in these affairs. Expedition is the life of all. That the King might be addressed to acquaint him with the danger, and the necessity of expedition. The Papists meet in Oxfordshire, Berks, and Bucks in great numbers, and well armed. That the Papists be taken care of that help others and have not taken the oaths. That all the Lord Lieutenants give a list of all in their precincts, and what Papists and the number of their families. *House resumed*. *Ordered*, That no Papist, or reputed Papist do presume to come into the Lobby etc. as in L. J., XIV. 245. *C.W.H. resumed*. A letter read directed to Sir Miles Cole, concerning Londonderry, dated 12 June from Chester. *House resumed*. Lord Lovelace acquaints the House that he had seized the Papist and that a gentleman that came over with him says he heard him drink the toast of Confusion to the Protestants, and say that he hoped to see all their throats cut. *Mr. Harris* (sworn): I have not seen this gentleman this twelvemonth till now. About two years ago I came from Venice with him, and he often drank a health to the confusion of Protestants. *Ordered* that *Arch[ibald] Montgomery* be brought in at the Bar. He is told: Here is a complaint against you upon oath that some time ago you drank a toast [of confusion to the Protestants]. He denies it, and says once he quarrelled and beat Mr. Harris, and he never directly nor indirectly said it, and he is willing to take the oaths. He withdraws. *Ordered* that Mr. Montgomery be discharged. *C.W.H. resumed*. Then the Committee agreed to the first Head, concerning the Isle of Wight etc. as in L. J., XIV. 244, after omitting the last part, as originally proposed, viz:—"and to take care that the Papists may be secured, that they may be no more a terror to their neighbourhood, and all French Papists banished." The two other Heads were then agreed to. A Committee was then appointed, as above, to prepare an Address. *Question*: Whether the quorum should be seven. Resolved in the negative. (MS. Min. 15 June.)—This Committee on 17 June desired Sir Robert Holmes to give them an account of the state of the Isle of Wight. *Sir Rob. Holmes*: The condition of the Isle of Wight is very bad, nothing having been done there since the restoration of King Charles II., though I have once or twice solicited. There have not been 1,000*l.* from the officers of the Ordnance towards repairs there, though the said officers gave an account to the Commons of 19,000*l.*, which when I told them I wondered at; they told me they intended to lay it out. I have laid out some money of my own, which I cannot yet get again. A little matter would secure us. There is not time to put the whole island in defence, but Yarmouth and Hurst Castle may be secured. 3,000*l.* at present would build barracks at Guisborough Castle, etc., which would put us in a good condition. In a month or two we can do a great deal. If there be any attempt upon us, it will not be until September or October. Then the French will certainly make an attempt upon us. I will advance 1,500*l.* of my own money, if your Lordships will promise me it again. Hurst Castle is the most considerable place in England. We have not soldiers enough, if we should be attacked by an army; we have not 1,000 men. It would be necessary that the militia of Hampshire, Berks, and Wilts should be in readiness to march upon an alarm. We have provisions enough. *Agreed*, That the King be moved, That the Isle of Wight may be put into a posture of defence, which the Governor assures their Lordships

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it is not in now, but may be in six weeks or two months time, if he may be furnished with 3,000*l.* towards the doing it. *L. Dartmouth* proposes that the Governors may be speedily sent to Jersey and Guernsey with men and ships, which ships may cruise there. *Ordered*, That the Governors be desired to be here to-morrow morning to inform their Lordships further concerning the said Islands. *Ordered*, That the Duke of Schonberg, Sir Henry Goodrich, Mr. Sheere, the Secretary of the Army, and some of the Commissioners for the Admiralty be desired to be here to-morrow. *E. Bath* says that Scilly is in an ill posture of defence, but that the King has sent an engineer to view. Fortifications cannot be done on a sudden, but they want men. The King has ordered two companies thither. The same holds good of Pendennis Castle. *L. Jermyn* proposes that a troop of horse should be sent to Jersey, and a frigate cruise there, and a small vessel for intelligence, and six months' provisions for the castle. The island is not to be kept against 3,000 men, nor the Castle without provision.—On 18 June *Sir Henry Goodrich* stated that Mr. Wharton, an engineer, was going that day or the next to view the Isles of Wight, Scilly, Jersey, Guernsey, Plymouth, etc. They had furnished *L. Jermyn* with 300 foot arms for Jersey. He demanded 500, but they could not then furnish them, but they would send the rest as soon as they could. They had sent carriages to Jersey. At the island of Scilly there were nothing but gunners. He proposes that *Sir Robert Holmes* should lay down the tender of his proposals before the Ordnance table. If it be for repairs, they have a stock; if for new fortifications, then they must go to the Treasury. *L. Vaughan*: There are no ships at Jersey and Guernsey, but the two yachts that attend there. We have sent the *Phoenix* frigate thither with officers, which is not yet returned. *Mr. Blaythwait*: In the Isle of Wight there are a regiment of foot, 13 companies, and a squadron of horse. In Guernsey there are 7 companies of foot, and 6 companies in Jersey. In Scilly there are two companies of foot. Neither in Anglesey nor Scilly were there ever any soldiers. In Dover Castle there are two companies of foot, but none in the other Cinque Ports, nor in Milford. In Pendennis there is a company of foot. Then the Address on the first and second Heads (*L. J.*, XIV. 246 *In extenso*) was ordered to be reported. (Com. Book June 17, 18.)

With regard to the third Head, viz^t, the Miscarriages in Ireland, *Sir Miles Cole* was examined by the Committee on 15 June, and stated that he had been out of Ireland for the last twelve months. There were 7,000 at Inniskillen; they had some arms and ammunition, but if they had more it would be much better. King James had sent 9,000 men to besiege them, but he believes they would not let them come near the town. The houses being thatched, they might easily be fired. Knows nothing of Londonderry. Hears there is an open boat that carries letters between Ireland and Wales. After debate, *Ordered* to report for an Address for the Minute Book of the Committee of Council for Irish Affairs to 1st May last. (Com. Book 15 June.)—This Report was made and agreed to on the 18th (*L. J.*, XIV. 246 *In extenso*), when the House presented an Address accordingly (*ib.*), and on the 19th, after the King's Answer was reported, the *L. President* communicated from the King some "intercepted letters" (*L. J.*, XIV. 248), as to which further see Annexes (*a*) below.—The Committee, after meeting on the 19th, ordered to report that they could proceed no further in the matter referred to them, until they inspected the Minute Books of the Irish Council. (Com. Book 19 June. *L. J.*, XIV. 250.)—Nothing further appears till 16 July, when the King sent a message, giving leave to a Committee

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to inspect the Minute Book in question. (L. J., XIV. 282.) Thereupon, on 19 July, the former Committee was revived, and power was given them to name a Sub-Committee of Inspection. (L. J., XIV. 286 and Annex (b) below.)—This revived Committee met first on 20 July, but only to adjourn to the 23rd. (Com. Book 20 July.)—On the 23rd they appointed a Sub-Committee of Inspection, consisting of D. Somerset, E. Mulgrave, E. Stamford, E. Rochester, L. Cornwallis, and L. Ossulston (Com. Book 23 July, and Annex (c) below). The proceedings of this Sub-Committee are not recorded; they reported to the Committee on the 26th that, after meeting on the 25th, they had need of a Clerk, and the Committee ordered Mr. Walker to attend them accordingly. (Com. Book 26 July.)—The House on the 26th ordered an Address to the King for the Admiralty Books to be communicated to the Committee.* (L. J., XIV. 295. No entry in Com. Book.)—The Committee on the 29th ordered to move for an Address to the King for the Minutes relating to Ireland from the beginning of his reign to the time when the Council Books began, to be perused by the Sub-Committee (Com. Book 29 July), and the House ordered accordingly, and the King communicated at first his compliance (L. J., XIV. 298), but afterwards, on 5 August, sent a message that there were no Minutes during the period in question (*ib.* 304).—Witnesses to attend the Committee were ordered by the House on July 29 (Annex (e) below) and August 2, 7, and 15 (L. J., XIV. 298, 302, 305, 312).—The Committee met next on 2 August, but only to adjourn. (Com. Book 2 Aug.)—On the 6th the Irish witnesses, being called in, were told that the Committee were sensible that they had made them stay long. *E. Rochester* delivered in a Report from the Sub-Committee, which was read. The Irish witnesses were then called in. *Sir Michael Cole* (sworn) is asked whether he proposes any means for reducing Ireland to the King, or any other. He says: We had orders to meet at the Duke of Ormond's. We waited on the King with an address at Windsor the day before the King came to London. Afterwards by Address we desired that the Irish Papists in England might be secured, to prevent a massacre in Ireland. We represented in an Address the means we thought might be effectual for reducing Ireland. I know not of any copy of the Address. The King's answer was that he would take care and do all that in him lay. The King said he expected something from us in the nature of a Declaration. We proposed that some ships should cruise near Ireland, and that the sword should be demanded of Tyconnel. On hearing the Roman Catholics were got into Ireland, particularly the Lord Dungal [Donegal], we had another meeting, and drew an Address that the Irish officers and Inns of Court gentlemen of Ireland might be secured as hostages for the Protestants in Ireland. We signed an Address and gave it to the L. Mead [Meath] to carry to the Duke of Ormond to sign and deliver, which if the Duke refused, then to tear it up. I heard it was delivered, but I fell sick. I know not of any Popish officers seized. *Mr. James Hamilton* (sworn) is asked whether he proposed any means for reducing Ireland. He says: I came hither in January, and gave the King an account that if forces were not speedily sent, the Protestants would be in a desperate condition. The King said that forces were being provided. I said, 3,000 then would be better than 10,000 afterwards. I told him arms and ammunition were most wanting. He ordered me arms from the Tower, and gave me a Commission for a regiment of Dragoons. I dare not say that I

* The Committee was ordered to meet the next day. MS. Min. No entry in L. J.

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proposed means to any other. He ordered me to go to Lord Shrewsbury, where Mr. Blaythwait was. Mr. Blaythwait said that it being a business relating to Ireland, it was fit to go before the Committee, though the King had told him he should have arms at the Tower. I attended the Committee, but have never yet got arms nor ammunition. Mr. Herbert told me Mr. Hamilton was gone to Ireland with arms, and he was to have some in my county, Down. My Commission was 5 Feb., and this was 10 days after. I know not of any Irish Papists seized here. The Committee for Irish Affairs told me I must not go back without arms and ammunition, and said they would justify me to the King, when I said I knew not how to answer it, since the King had so long since ordered me to raise a regiment. *Mr. John Phillips* (sworn): Proposed no means for reducing Ireland. Heard Tyrconnel would have delivered up the sword, if demanded. He put his best goods on shipboard; about 60 carts were laden with his goods. Till Col. Richard Hamilton came over, he was inclined to be gone. His Popish neighbours desired him, if any proposals came over from England, that he would acquaint them, for they would accept them. The Papists then were so afraid, they placed their children with Protestants. If 500 men had come then, Ireland would have been reduced. *Mem.*: Sir Robert Colvill to be examined to this part. Witness is desired to put his evidence in writing. *Re-examined*: He came over in the middle of March. The English were dejected when Col. Hamilton came over, he being a Popish General. The Committee then ordered *Mr. Sam. Pepys* to attend at the next meeting, and also ordered the Commissioners of the Navy to give an account in writing by one of their officers of all orders that had passed through their hands in relation to the service of Ireland from the beginning of their Commission to the 1st of May last. (Com. Book 6 Aug. Annexes i, k, and l.)—On the 7th the Committee being moved that Mr. Blaney may be admitted to take in short-hand what the witnesses shall say, he is called in, and ordered to do so, and is likewise enjoined secrecy, which he promises. *Sir Arthur Cole* (sworn) is asked whether he proposed any means for reducing Ireland. He says: Once at the Duke of Ormond's there were proposals made in an Address. He remembers not the contents. At Windsor an Address was made that his Majesty would take the government of Ireland. *Mr. Robert Rochfort* (sworn): I came from Ireland about the 21st of December. I know no other application than the Addresses. There was a Declaration drawn up by Sir Jo. Temple. I was desired to communicate it to L. Burlington and others, which I did about the beginning of January. Sir John Temple told me the nobility and gentry took just exception that he should do it, therefore he desired it again of the Prince, and the nobility and gentry met and drew an humble proposal to the Prince that a Declaration might be drawn. This proposal was dated about 9 Jan. at St. James'. After this, Sir John Temple was appointed to draw a letter to Tyrconnel to deliver up the sword. I heard Mr. Pine say that he brought it to Mr. Harbord's chamber. The latter fell sick. I know not what became of it. This was about the 15th of February. Afterwards, we proposed that 1,000 men, with arms, might be sent to Londonderry, with some other Heads. We presented these to the Board. The Protestants being hardly used in Ireland, we proposed that the Irish Popish officers and Inns of Court gentlemen might be secured as hostages for their better usage. I have no copy of the Declaration nor of the Addresses. I have seen letters from C. Justice Keating to Sir John Temple, desiring that no forces might be sent into Ireland; for if forces came, Tyrconnel would let

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loose 40,000 of his myrmidons to eat up the Protestants. This was about the beginning of January. The letter that was drawn upon the Address at the Duke of Ormond's was, I think, given to Sir Jo. Guise or Sir Thos. Littleton in the House of Commons. On 7 Dec. Derry was shut up; about the 6th of Dec. I heard there would be a general massacre designed for the 9th. In the several discourses I had with Mr. Harbord after I came over, he seemed to be as much concerned as ourselves. *Sir Robert Colvill* (sworn) is asked whether he proposed any means for reducing Ireland. He says: We sent Addresses to England, imploring men and arms. It was the middle of May before I came hither. In Down and Antrim, Tyrconnel wrote to Lord Mount Alexander and me. I saw Commissions in the Secretary's room for about forty regiments. I told him this was small encouragement for Protestants. He said there should be care taken; so I left him. He courted me to have taken command on me. He told me he was weary of the sword, and he would throw it down with as much satisfaction as he received it; but added "What shall I do with it? There is nobody to receive it. Shall I throw it into the kennel?" He spoke twice to me to this purpose, I think, in the three days I stayed in Dublin. A week before, I heard he had sent all his best goods aboard on a vessel belonging to Golding. Afterwards, fearing Wright with his vessel would stop Golding, he took out his goods again. *Henry Eclin* (sworn): Asked *ut supra*. Says he was not here till 1 Feb. He often attended at Whitehall, but never was called to any particular service. W. Armour brought letters to the L. Clarendon, M. Halifax, and Sir Edward Seymour, that gave an account of the condition of the North of Ireland. The letters were about 21 Feb. from L. Mount Alexander and others. Leighton carried over Commissions to our country, but they came there so late that we had no great benefit from them. The Committee told Mr. Armour that they would do as much as if their wives and children were there. *William Armour* (sworn): Asked *ut supra*. Says: I was sent hither about 17 Feb. from the nobility and gentry of the North-east of Ireland to L. Fitzharding, L. Halifax and L. Clarendon, to intercede for arms and ammunition, for they had men but not arms. The Committee told me I should have my errand. Before I could be dispatched the account of the break came, which was the 14 March. I know not of any treachery that was the occasion of the break. I believe it was because they had no arms. There are no walled towns but Carrickfergus, which was in the hands of the enemy. I cannot accuse any man in England or Ireland. Only I was not dispatched, though the Committee of the Council told me from day to day I should be dispatched. I was recommended to Mr. Harbord, whom I found zealous upon every occasion; so was L. Danby, and all were very civil. I attended from day to day on the Committee, and was not directed to attend any particular person. I know nothing of any Declaration designed for Ireland. *Mr. Edmond Stafford* (sworn): Asked *ut supra*. Says: I came hither on 23rd January, and being known to the King, I gave him an account of the state of the country. I went with Mr. Armour to several of the Committee. They were all very civil. I desired of Mr. Harbord if I might have a Commission for a troop of horse in Sir A. Rawdon's regiment. He said the King had left it to the Colonels to name their officers. *Mr. Luke King* (sworn): Is asked whether he knows of any proposal that was made to the King for reducing Ireland. Says: I came over in January. I know nothing. It was believed in Dublin in December that Tyrconnel would on easy terms have delivered up the sword. *Richard, Lord Coote* (sworn): Asked *ut supra*. Says: I know of no proposals. I was at

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none of the meetings. I had no notice of them, and therefore I did not go to them. I have been the King's servant. I know not of any disposition in L. Tyrconnel to deliver up the sword, nor of anyone that was sent to him for that purpose. I have heard my brother was treating with Mr. Harbord about going to L. Mountjoy. His wife coming to town, I believe, dissuaded him: he himself was a little averse to it. Mr. Harbord told me my brother was not willing to go. I reproached my brother with it. His errand was, as I take it, to assure the Protestants the Prince would send them succour, and give them protection. I know not that L. Mountjoy was to demand the sword. Mr. Harbord told me Major Fred. Hamilton was pitched upon to go with my brother, and declined it. I think Hamilton went ten days or a fortnight after. I know nothing of any Irish Papists being seized here; only what the general report was, nor of their being released. *Capt. Richard Wiborough* (sworn): Asked *ut supra*. Says he came from Ireland 12 months since, and knows nothing. *Sir Richard Rivers* (sworn): Asked *ut supra*. Says: All the revolutions were over before he came hither, which was on 9 Dec. He has heard since that L. Tyrconnel was inclined to deliver the sword. There were not then less than 20,000 Protestants well-armed in Dublin, and not above 5,000 Popish soldiers. Mr. Rochfort knows more of this. Witness has been told that if L. Mountjoy, L. Meath, and L. Granard would rise, these Protestants would join. There were then but 600 or 700 soldiers with Tyrconnel in Dublin. All the arms of Ireland, that were considerable, were in Dublin, guarded by about 14 or 15 men. Mr. Hartstongue can say more to this. They expected daily succour from England. *Mr. Rochfort* (re-called): Says: I believe there were 7,000 or 8,000 Protestants in Dublin well-armed about the 7th of December, and L. Tyrconnel had not above 1,000 men. We might then have secured the Deputy and all the Kingdom if L. Mountjoy or L. Granard had encouraged us by joining with us. L. Meath desired Tyrconnel that he might arm his tenants, and said that if he wanted arms he could furnish him. Tyrconnel swore that was rebellion, and that, if it were not out of respect to his family, he would imprison him. *Sir Oliver St. George* (sworn): Asked *ut supra*. Says there was a meeting at the Duke of Ormond's to desire there might be a speedy course taken for reducing Ireland. This was about the 9th of January. About the 23rd of February there was a Declaration from the Lords of the Committee. He never heard the Declaration was sent into Ireland. About eight [copies] were directed to Lord Mount Alexander. He believes he has a draft of the Address, and promises to let the Committee have it. He remembers they waited on the Committee at the Council Chamber to desire to see the Declaration before it was printed. He thinks the answer was that they should not see it. After it was printed they got a copy of it. They attended the Committee at L. Shrewsbury's to desire copies of it, but they had none. Afterwards they were told they might have as many copies as they would to send away. He took a quire or more, and sent 20 to Ireland in letters. *William Shaw* (sworn): Asked *ut supra*: Says he was at some meetings at L. Ormond's. Tyrconnel disarmed the army when L. Clarendon went away, and took in the worst of men. In the beginning of January witness made proposals to L. Coote as in the Paper now delivered in (Annex f below). It was always his opinion that Tyrconnel would never submit without force, but yet a small force, say 2,500, he believed would do it. He discoursed of this matter to Lord Clarendon. He knows not whether he discussed it with L. Bath. He never spoke to Mr. Harbord. He knows things have been delayed, but who is the cause thereof he knows not.

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On 10 June he sent a paper of his opinion to Mr Harbord. *Agreed*, That Capt. Shaw's paper be read to-morrow. (Com. Book 7 Aug.)—On the 8th, the *Archbishop of Dublin* gave evidence. Being asked whether he knows of any proposals that have been made to the King for reducing Ireland, he says he knows of none. He came out of Ireland on 5 Feb., and to London at the end of March. He knows that Tyrconnel appeared weary of the government, and told him he would be glad to be out of it, if he could have his Master's leave. He knows not that he was willing to resign to King William. The foresight that there would be oaths imposed on witness and others induced witness to leave Dublin. Tyrconnel had about 3,000 men when witness came away. He believes the Protestants were about 5,000 men armed in Dublin. When Col. Rich. Hamilton came over they thought he had stolen away; at last they heard he came with propositions of relinquishing the government, but he quickly discovered himself. The Irish were very low then, but from his coming they took heart. The Irish were so afraid till then, that they endeavoured to secure their goods with Protestants. All the Commissions for raising men were after Hamilton came over. He knows nothing of any treachery, of betraying any place in the North of Ireland, nor of any messengers sent to Ireland. It was reported that Hamilton came to persuade the Deputy to recede from the government. Witness and others thought him an unfit man, and wondered how he came to be sent. This was the crisis, the fatal hour of Ireland. It was said in Ireland that Hamilton came from the King. *Sir Oliver St. George* (sworn): I told the Committee of the Commons that I thought Mr. Harbord was guilty of some delays. I told Mr. Harbord that the King had commanded me to come to him to speak with him about sending messengers to Ireland with letters from the King. Mr. Harbord appointed me to come to him and he would prepare his instructions, but he put me off from time to time. I brought Mr. Calthrop to him as fit to send to Munster. I brought Carteret, another fit person, to him. They were delayed by Harbord. There was three weeks' or a month's time between the time I brought these men to Harbord, and the time the despatch was made; but indeed they never went. Capt. Purdan came over with expresses from E. Inchiquin, but stayed three weeks before he was despatched; but the wind or something or other hindered, so that he never went. Mr. Coote told me he was to go to L. Mountjoy with expresses from the King. He prepared, but Mr. Harbord told him he had a fitter messenger than him to send, which was Frederick Hamilton. Mr. Coote was troubled, but acquiesced. Hamilton had the despatches, and was gone, but he either fell sick or pretended to do so, and never went over. *Ordered*, That Mr. Coote be summoned from Tunbridge to attend. *Witness* delivers in a copy of the Address (Annex *h*) that was agreed on at the Duke of Ormond's, and resumes: I think there was an Address to desire that the Popish Irish gentlemen might be seized. Lord Dungan, I heard, was seized. The Papists in Dublin made bonfires when Dick Hamilton came over, saying he was worth 10,000 men. I have often spoken to Mr. Sydney and Mr. Harbord about Ireland. They seemed to wish well to the matter, but I remember not what answers they gave me. We made no formal application before the Committee was settled. *Capt. Shaw* (whose paper, Annex *f*, was read): It was generally thought by my countrymen that Ireland would submit. I believe Serjeant Osborne told me he thought so. I heard Mr. Rochfort say that it was said Tyrconnel would submit if Hamilton was sent over. L. Dungan was in custody at Chester. I heard Hamilton had a pass. *Sir Arthur Rawdon* (sworn): I was sent by Col. Gustavus Hamilton out when

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Coleraine was quitted. The Colonel seemed dissatisfied at our taking arms so soon, and said we should not see the Kingdom quiet again. He seemed dissatisfied with the proceedings in England, and with our taking arms. The postmaster of Edinburgh brought the Declaration to Ireland. There were methods taken to destroy the Protestants as soon as Hamilton came over. *Lord Coote* (after hearing part of Shaw's Paper read): I do not remember having told Capt. Shaw that I had spoken with anyone in power about his Paper, nor did I speak to any in power. I know not but Shaw is honest, but I do not admire his judgment. I desired him to come for his Paper again; I found I had no power. It was a general notion among us that Ireland would submit without forces being sent; that the Scotch were numerous, and would defend themselves against the Irish. I told Capt. Shaw I had not interest enough with the King to deliver my own nor other men's opinions to him. *Edward Hansard* (sworn): Col. Gustavus Hamilton took Doe (? Dowth) Castle from me and put in his man Stuart, who delivered it up to Mac Swine, a Tory. *Capt. John Coltrop* (sworn): It was proposed about Christmas that I should be sent to Ireland. I had a Commission to be Captain of Dragoons there. *Capt. John Wynn* (sworn): Gustavus Hamilton commanded in Coleraine when I was sent to Derry, where Lundy would not receive us. *Mr. Daniel Sherrard* (Steward) (sworn): Col. Lundy turned the citizens off the guard, and put on his own men. Lundy let us have no ammunition till the day the enemy came to the town. He made Norman Lieutenant-Colonel, and Hill Major, neither of whom was fit. *Capt. Netterville* was frequently admitted into Lundy's counsel; he is now with King James. Lundy would have had us surrender, when King James offered us pardon. I know several letters passed between Lundy and Tyrconnel. I know not of any correspondence between Lundy and Colonel Gustavus Hamilton. I have heard that Col. Gustavus would not fight against King James. Col. Lundy made William Stuart Captain, who refused the oaths, and Hamilton has since offered him to be a lieutenant. (Com. Book 8 Aug.)—On the 9th, *Capt. John Dunbar* (sworn) says: Lord Granard offered Lord Kingston any command in the new army. Lord Kingston agreed to meet at Munster with all the forces they could raise, but before the time fixed, Lord Granard went to Dublin, and Lord Kingston was one of the ten that were excepted. Dick Hamilton was Lieut.-General of the forces. We never believed Tyrconnel would quit the government. We looked upon his pretence of doing it but as a sham.—The Committee then read and delivered back to the witness, (1.) A letter of 10th [?] 1689, from Gustavus Hamilton to Lord Kingston; (2.) An Order of the Council of War under L. Kingston, of 13 April 1689; and (3.) A letter of 18 March from Gustavus Hamilton and Mr. Norman to Lord Kingston. Then *Mr. Pepys*, *Mr. Bowles*, and *Capt. Priestman*, from the Commissioners of the Admiralty and the Navy, are called in, and deliver the accounts in writing, as directed on the 6th inst. (Annexes *i*, *k*, and *l*.) *Mr. Bowles* is asked who acted between Mr. Pepys' time and the time of the Admiralty, about 17 days, viz^t from 20 Feb. to 8 March? He says he is not prepared to answer now. Thinks L. Clarendon was directed to act for some few days. His Lordship employed witness as his friend. He is directed to bring an account in writing. *Major Richard Done* (sworn): Asked what he can say concerning the mis-carriages in Ireland, he reads a paper (Annex *m*) of what he can swear. The post-master's name at Holyhead, where he saw a copy of Col. Hamilton's pass, is Mr. Owen. In December Tyrconnel had but about 3,500 men in arms, and he believes there were more than 25,000

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Protestants then in Dublin that had effectual arms. *John Davis* (sworn): Gives an account of the Address agreed on at the Duke of Ormond's, for men and arms to be sent to Londonderry. Arms and money were sent, but not so many as we proposed. He waited on L. Halifax, L. Lumley, L. Fauconberg and Mr. Harbord severally. He proposed notice might be taken of persons that came out of Ireland, which was accordingly done, and that shipping might be sent to Derry, and L. Fauconberg or Mr. Harbord told him it was already done. He believes there were not above 2,000 soldiers in Dublin at the time the Prince of Orange came to London. He believes the Protestants were then 24,000; some of them had been disarmed before. He knows of no messengers being sent to Ireland but Mr. Hamilton, Mr. Cairnes and Hobson, who, he fears, is taken prisoner. *Capt. John Dunbar* (called in) produces a letter from Col. Lundy of 20 January last to E. Clarendon, which is read, and given him again. *Lieut.-Col. George Bremigam* (sworn): Has been come from Ireland since 15 March. About the time Col. Hamilton came into Ireland, Tyrconnel was in a bad posture. He bought up all the guineas at high rates, and pulled down the hangings; they thought, in order to be gone. *Mr. Edward Owbery* (sworn): Gives an account of Capt. Bremigam's and Sir Arthur Rawdon's design of seizing and disarming the Popish soldiers at Lisburne, etc., and of Mr. Hamilton's of Tullimore's dissuading them. *Capt. Warham Jemitt* (sworn): Was promoted to E. Antrim's regiment by L. Mountjoy's orders. He had heard there were 3,000 or 4,000 men armed in Dinningan. He was Captain at Culmore, and was commanded to leave that place by Col. Lundy. He saw the arms that came from England, about 1,500 or 1,600; very many of them were useless, and the match was very pitiful stuff. *Ordered*, That Mr. Owen, postmaster at Holyhead, send the Committee a copy of Col. Richard Hamilton's pass (Com. Book 9 Aug.)—On the 13th *Mr. Thomas Coote* (sworn) says that the nobility and gentry of Ireland made an Address to the Prince for the reducing of Ireland. About the 25th December Mr. Harbord ordered him to attend him that night for despatches which he was to carry to Ireland. He attended him till the 31st, Mr. Harbord being still busy. The latter told him Capt. Hamilton should go, and he was to return him the despatches. Witness was not willing to decline it, without the Prince first knowing it. Produces the Prince's letter to a person of quality in Ireland, which he was to carry, and another letter from Mr. Harbord to the same person, whom he desires to be excused from naming, because, he being now with King James, it might be to his prejudice. Mr. Harbord once said to him we should get land cheap in Ireland; he would take 20,000*l.* with him to buy it. He often proposed to Mr. Harbord that forces might be sent into Ireland. Mr. Harbord told him there were nearly 10,000 men going, and wished him to write as much to his friends there. Major Hamilton was not sent with that expedition that the business required. Witness heard that, when he did go, he got no further than Beaumaris. He believes Mr. Harbord employed Mr. Hamilton rather than him, because Mr. Hamilton lived in E. Essex' family with him, and he was willing he might come to his old post again, which was to have a company of foot. *Sir Oliver St. George* (called in): Mr. Coote told him he applied himself to the King to be sent to Lord Mountjoy to demand the sword. Mr. Coote was pitched upon to be employed, but afterwards Mr. Harbord sent Mr. Hamilton instead. Mr. Coote, he thinks, once said that Mr. Harbord said to him "What should we make such haste for into Ireland, for, if we do, we shall get no estates there, for I shall carry 20,000*l.* with

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me." He has heard that Mr. Harbord said to Mr. Hugh Hamilton "God's wounds! what do you tell me of Ireland? I would not go over the threshold for Ireland." *Mr. Coote* (recalled): Remembers not the words Mr. Harbord spoke to him, but he spoke to the effect that there was no such haste for Ireland. This was after witness was off of going, and before Mr. Harbord's sickness. *Mr. Hugh Hamilton* (sworn): He came from Inniskillen with an Address to the King about the 15th of February. The King ordered him to attend the Committee for Irish Affairs. He was afterwards ordered to go to Mr. Harbord. He attended him and pressed him for supplies. Mr. Harbord told him he would not go to Whitehall if it would save the nation from sinking. This was at his house in Newport Street. Produces two copies of Petitions presented by him to the Committee for Irish Affairs, which are read, and returned to him. He never had any answer to his Petitions. *Sir Charles Porter* (sworn): Mr. Pine and Mr. Rochfort often came to him. He advised there might be a Counsel that might peruse all letters and accounts from Ireland. About the 21st of January there was a sort of Declaration penned; but he knows not whether it was delivered. He saw an inclination in all that he waited on to send relief to Ireland. *Capt. John Dunbar* gives in two lists of the officers in Col. Gustavus Hamilton's, that was Col. Peyton's, Regiment, which are read (Annexes *p* and *q*). *Mr. Bowles* delivers in a Paper (Annex *o*) which he says is all the account he can give while E. Clarendon was concerned. (Com. Book 13 Aug.)—On the 17th *Gilbert Ormsley* (sworn) says he knows not where the miscarriages of Ireland lay. Great bodies of people in the North of Ireland were gathered together, but without arms. They expected relief from England. He came to England on 15 March. (Com. Book 17 Aug.)—The next and last meeting of the Committee was on the 19th, E. Rochester in the chair, when they adjourned to the 21st. (Com. Book 19 Aug.) Further proceedings were stopped by the Prorogation on the 20th.]

Annexed:—

(a.) 19 June 1689. Papers and letters, &c., intercepted on their way from Ireland. Communicated to the House by the Lord President from the King this day (L. J., XIV. 248. MS. Min. 19 June), and after having been sent on to the Commons (C. J., X. 187), delivered again to the House by E. Shrewsbury on the 22nd (L. J., XIV. 252. MS. Min.), pursuant to Order of the 21st (L. J., XIV. 251. MS. Min.) They are as follow:—

(a¹.) Letter on gilt-edged paper, with cover numbered 1 and addressed "For Mr. William Pigott," as follows: "June the 8th. Two days since I received yours of the 14th of last month. Your factor who brought it had much ado to get over. I have discoursed with him about the goods and commodities you desire; they shall be prepared with all speed, but, there being an embargo at present, 'twill be very hard to get a vessel to transport them, and besides, could one get one so long as the English frigates are cruising on these coasts, it would run hazard of meeting them, and then they would make prize of the goods, being of this country. It will be a month at least before they can be got ready to be put on board: in the meantime I shall be endeavouring to have a vessel ready to put them on board, and shall endeavour to make friends to get a pass, notwithstanding the embargo, and maybe by that time the French fleet may be at sea again, and then the

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English frigates will in all likelihood go and join their fleet; but before the vessel shall be laden I will find means to advertise you of it, that you might name some bye port or creek where we might land the goods without meeting at first landing with the Custom-house officers, for if I can get them but once on shore, I shall do well enough to secure them. As for news, King James' troops before Derry stormed an outwork those of the town had made, but did not succeed. Had several good officers both killed and wounded, and some soldiers; but for all that the knowing men say that, if they can hinder M. General Kirke getting into that town, it must at last fall, their victuals being almost spent. A camp is forming about Dublin, several regiments being in and about that town. My service to all my friends. Care shall be taken you shall not be a loser by any concerns you may have here. This I am charged to tell you: you may depend on't." [Stated in MS. Min. of 19 and 22 June, when it was read in the House, to be in King James' own hand.]

(a².) Letter, with cover numbered 2 and addressed "For Mr. James Goodlad," as follows:—"June the 8th. Two days since I received yours of the 16th, which was very welcome to me, since it gives an account that our goods are like to find so good a market when once they shall arrive there. The great difficulty will be to find means of getting them safe over to you, the embargo being so strict on both sides, and the Customers' officers so very diligent on your side. It will be above one month before I shall be able to secure and load a vessel with our goods. So soon as they are put on board you shall have notice; but in the meantime it would be well you should send over to advertise at what bye port or creek one might land them with less hazard of being met with by the Custom-house officers. I am as sensible as you that no time should be lost in getting our goods to the market for fear the price should fall. I hope by the means of him that brought me yours to settle a constant correspondence with you and the rest of our partners. He has given a full account of all things. I had been long without a letter from you, and so was afraid some accident had happened to you. One who came over hither above a fortnight since told me he had seen you, though you did not write by him, and that you intended then to go north, which I find by yours you designed to have done had you not received mine by him, who got safe to you. As for news, Derry holds out still. On Tuesday last the King's forces there stormed an outwork those of the town had made, and were beaten off with the loss of some good officers and a few soldiers. However, if they can hinder M. Gen. Kerke from landing with his three regiments and getting into the town, that place must soon fall for want of provisions, for all they have [are not] above four thousand well armed men in town. The enclosed is for my friend. Care shall be taken to furnish you both with money. He that brought your letter writes to his friend to advertise him of it also. It would be of great use to me for the carrying on of our concerns here, to have your brother come over if possible, and that for more than one reason." [Stated in MS. Min. of 19 and 22 June, when it was read in the House, to be in King James' own hand.]

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- (a³.) Letter with a blank cover, as follows: "June the 8th. Two days since I had the satisfaction of yours without a date, but judge it to be of the same with those which I had by same person; they were of the 16th of the last month. I had another from you, a short one, without a date also, some a fortnight since, but had not the means of writing to you sooner than now. Your last was delivered to me open, so that he that gave it me may have read it all, if his conscience or curiosity will have given him leave. I was very glad by it to find that the convert had got safe to my friend. I feared he had been taken, since I was so long without hearing of him. I am informed he escaped it very narrowly. I do not at all wonder others who were sent are not yet arrived, since the ports are so strictly guarded. The remarks you make are very just, and none certainly have so little bowels as some who pretend to great devotion, and as another author says, break nine of the Commandments to keep one. Your friend and my other friend have given me a large account of the condition of things where you are. All things are adoin'g here to be in condition of making use of the opportunity, and 'twill be want of means and not of will, if their advice be not followed. As for yourself, I am of opinion 'tis best for you for the present to stay where you are, if you can do it with safety, which sure one of your zeal may do, though you have not done some things they had a mind you should have done, and which they know had been unfit for you to have done. I can answer for it that your friends here are very well satisfied with your behaviour in more than that; I am sure I am, and am taking care to supply you with what you want. Your friend will tell you all the news, I not having time to do it. I hope one day we shall be on the same side of the water again. I shall be sure to write as often as I can." [Described in MS. Min. of 19 June as a letter supposed to be in the King's hand forced, and enclosed with the letter to Mr. Goodlad. In MS. Min. of 22 June it is described as a "letter in a cover without direction."]
- (a⁴.) Letter from W[illiam] B[romfield], addressed To George Throckmorton, Esq., at Chitfield, near Hitchin, in Hertfordshire, as follows:—"Friend, I got hither the 6th inst. through the greatest difficulty in the world, being like to be cast away in a wherry which I was forced to go over in. The King is well. Derry is not yet taken, having not above ten days since got any great guns and bombs thither, for the K[ing] went down at their instance and promise to surrender; but when he came, instead of surrendering, they fired at him and killed men within twenty yards of him, which provoked him to besiege it close. And now we hear their provision is almost all gone, so that they cannot hold long by all probability. Kirk is at sea over against Derry, but dares not venture in, there being such preparations to receive him as will make him sweat a cold sweat; yet it is expected he will land somewhere, but wherever it is, I doubt not but [he] will be warmly received. By the enclosed thou may perceive what measures he has taken in Scotland, and a Declaration will be suddenly out in England. Not doubting to see thee, ere it be long, in such a condition as may make all his enemies tremble. All things are making ready. My love to thyself, wife, Miss Hide and all thy children, is all at present

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from thy friend W. B. Dublin, the 9th June 1689. I have sent my wife some blank Commissions for Colonels, if there be any may be trusted. If Sir C. C. or Sir Thos. F. or any other were secure, it would be well. The Act of Settlement is taken off. I wish it doth the King no h[arm]* at this juncture." [Described in MS. Min. of 19 June as "A packet directed to Geo. Throckmorton, Esq., at Chiffield, in Hertfordshire, signed W. B. It mentions Commissions signed by the King and Melfort. The print in them is an Act of Parliament."]

(a^b.) Blank Commissions for Colonelcies of regiments in England. Signed, JAMES, R. Subscribed, By His Majesty's Command. MELFORT. Undated. Four parchments. Each is as follows:

"James the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our (*blank*) Greeting. We, reposing especial trust and confidence in your loyalty, courage and good conduct, Do by these presents constitute and appoint you to be Colonel of a Regiment of (*blank*) in our Kingdom of England, hereby giving you full power and authority to name and appoint your Lieutenant-Colonel, Major, Captains and Lieutenants and (*blank*) in your said Regiment. You are therefore to take the said Regiment as Colonel into your care and charge, and duly to exercise as well the officers as soldiers thereof in arms and to do your utmost endeavours to keep them in good order and discipline. And we do hereby command them to be obedient to you as their Colonel, and you to observe and follow such orders and directions as you shall from time to time receive from us or any other your superior officers, according to the rules and discipline of war, and in pursuance of the trust we have hereby reposed in you. Given at Our Court at Dublin Castle the (*blank*) day of (*blank*) 1689, and in the fifth year of our reign." [See preceding paper and Annex (a⁸).]

(a⁶.) Letter from W[illiam] B[romfield] addressed to Mr. Abbott, at the Lord Mullenex [Molyneux] at Croxhall, Lancashire, as follows:—"Sir, By the King's direction I am to request a copy of that Declaration I saw, and also what other news you possibly can send. Derry is not taken; Kirk cannot land. Derrians want provision, and cannot hold long. I got well hither, but with the greatest difficulty imaginable, being like to be cast away in a storm, which lasted from the fifth day's night until the sixth day almost noon. Your letter was worth nothing, being wetted and spoiled, but the Gazette the K[ing] was glad of. So soon as the Fr[ench] fleet comes, I hope we shall be ready to visit you in some part of England, but what is not convenient to tell, especially when none knows but one. My kind respects to thyself, my landlord, Mr. Latham, Mr. Blundell, and the rest, is all from thy friend W. B. Dublin, the 9th June 1689." Endorsed, Dublin, 9 June, W. Bromfield. [Read in the House on 19 and 22 June. MS. Min. of dates.]

(a⁷.) Letter from C. Powell addressed to John Lane, Merchant in Brod [Broad] Street, London, as follows:—"Friend, Thanks to Almighty God for His wonderful deliverance from the tempest I met with, for He is merciful above what could be expected. I did my business very well and was received with favour, and all the acknowledgements to thee imaginable. I ask nothing

* The paper is here torn.

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but what is granted, nor propose nothing but what is accepted, so that if all things answer expectation, I may expect to hear from thee or see thee in a short time. The enclosed are intended for print and also to be disposed of. The Act of Settlement is broke, but the K[ing] says that he will make full satisfaction to every person not in arms against him, equivalent. Upon all accounts, it does disturb many, but the hope of reprisal stops. I was very urgent to have a proviso inserted in the Act, but he told me it was too late. I could wish the Parliament might be adjourned until a better opportunity, and that omitted signing, for which I shall labour. Money is ordered per Bill of Exchange to our friend as directed. It was impossible in this court I could be private, but yet have carried all things so that, though they know such a person as I am come, none knows my business. I desire thee to give me account whether thou sent any evil account of the Lord Milford [Melfort] *per* Mackintosh, for he has come in thy name and accused him as a person not fit to be trusted, being a hot and violent man against Protestants etc., which I find quite the contrary, but I doubt not thou canst see further and know more in these things than it is possible I can; therefore if thou hast anything to communicate to the K[ing] for his service and security, be pleased to let me know it, and it shall be delivered to thy desire. If thou hast not sent any such thing *per* him, be pleased to let me know, for he is now in custody upon suspicion of bringing from and sending a person into Scotland, with some other such like things; at leastways give me thy sentiments of him, for the K[ing] is very desirous to know. Money will be sent according to expectation, *per* the way of France, and to the friend the linen-draper, White Hart Court; pray order him to draw a Bill of Exchange of 25,000*l.* upon the Lord Waldegrave, his Majesty's Envoy Extraordinary at the Court of France, and direct to St. Germain's at ten days' sight, who will certainly pay it exact, and do so once in a week until the whole be drawn off. I had done up Mr. G's letter before I received order, for I pressed it earnestly. The Lord Milford desires to be remembered to thee, and so do divers Lords, but he desires to be commended by some means or other to Sir Robert Hamilton, Lord Salisbury, and the rest, prisoners in the Tower, if it can be done conveniently. If this messenger comes safe, pray dispatch him away with what speed possible. So with dear love to thyself and wife and J. S. and his wife etc. I bid thee farewell and remain C. POWELL. 10 June 1689." *Endorsed.* Dublin 9 June. Ch. Powell. Letter to Wm. Pigott. [Described as "Packet directed to John Lane, Merchant, Brod Street, London, with enclosed prints, subscribed C. Powell. There is a very long paper to the states of Scotland for choosing a President." MS. Min. 19 June.]

(a².) Letter, addressed To James Briggs, at Charles Pidgeon, Esq. Counsellor-at-law, Gray's Inn, London, as follows:—"Sir, Thy favour to thy friend has laid a double obligation of acknowledgment upon him, insomuch that he received it with the greatest love imaginable. I got to him last Thursday through the greatest difficulty in the world, for I was forced to expose myself in a wherry, and met with such a storm that put all hopes aside of ever attaining my port; but God Almighty had not only a respect to the integrity of my heart to the K[ing], but

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also to the justness of my cause, and delivered me from the devouring waves to admiration. *I have here enclosed a Bill of Exchange which will be paid and all the care imaginable taken about it.* [These words in italics are struck through, and there is noted in the margin 'I had intended a Bill of Exchange by this, but thou may expect the money will be sent to Henry Gouldney, Linendraper, White Hart Court, Lumber [Lombard] Street, of whom thou shalt have a further account.'] My love and respects to thyself, and second also to the C. of D., and tell her I was and shall be careful to remember her. Our friend has writ to thee and my friend; the bearer dispatch away within 48 hours, if possible, and send all the accounts of business thou canst, for mine was the greatest satisfaction imaginable. I could do no less than send thee a Commission, believing none better could be trusted either to use it or lay it aside. Mackintosh, who pretended to come from somebody, is in hold for suspicion. Pray give us thy sentiments. L. P. thy B. would be very welcome, but hope to see thee and him on E. coast quickly, only waiting the Fr[ench] Fl[ee]t's coming. Derry was never attacked until within these ten days to the purpose, for the K[ing's] mercy extended above all things, rather labouring accommodation than anything else, therefore would not suffer guns to be sent down; but now it is expected their wants will make them comply, of which I hope to give thee account per the next. Pray let my old directions serve turn to direct any person to us, for I have settled vessels to be on constant motion. If any person writes to thee in the name of C. Powell, assure thyself they are friends, therefore answer their desires. The enclosed are intended to be reprinted and distributed, and send us a copy of the last Declaration, for I happened to see one in Lancashire a little before my departure." *Endorsed* Dublin 9 [June 1689]. Goodlad's letter. Coñ. [Described as "Packet directed to James Briggs, at Charles Pidgen's Esqre. Chamber in London, Grays Inn. He mentions a Commission sent to them. A letter to the Scotch Convention not signed by anyone." The letter read: "To the Convention in Scotland." MS. Min. 19 June.]

(a^o.) Letter "To the Lords Spiritual and Temporal, Barons and Burgesses assembled at a Convention of the Estate of that our ancient Kingdom of Scotland by our special Authority.
" My Lords and Gentlemen.

The injustice of our enemies' proceedings against us are (*sic*) now so well known to the world, that it were needless for us to give any further account thereof, but that there are duties lying upon us as a King by which we are indispensably tied to defend and maintain that right which Almighty God has given us to our Imperial Crowns, and to protect our people from those who have destroyed their property and have brought them into slavery by an arbitrary and lawless power; In the doing whereof we are bound to use all the means Almighty God shall put into our hands. This makes us put you in mind of the falseness of the grounds the Prince of Orange and his wicked accomplices went upon, the easylier to usurp our right and enslave our people. They pretended we resolved to overturn the Protestant religion established by law, but, finding that calumny too gross to be believed by any man of sense, who knew how disproportioned our force was to such a design, though we had had the intention (which we do solemnly declare we never had), they were forced

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to give it out that we had a league with France for that end. But even that was not like to take with the people, who had seen no effects of any such thing either by assistance at sea or land, and they were obliged to assert that they had the very original Treaties in their power to produce. But so soon as they were strong enough within our dominions barefacedly to show their design, and that the Prince of Orange had most unnaturally usurped our Crown, the world may see how far they are from making any such treaty appear: And it is manifest to all who knows (*sic*) us that it was never our principle to force any man's conscience, nor press our own religion by any other means than those of charity and giving good example to others to live well with such as differed in persuasion from them: And though the care of the National Protestant Church as established by law was so much pretended, yet it is now evident that she has suffered more in a few months of his unjust usurpation than the worst of what she really dreaded from us would have amounted to in many years to come, had we designed them prejudice, as we before declared we never did. Besides, the treatment he has given the Church established by law in Scotland may convince the world he came not to support the Protestant Religion as by law established, and give warning to others to judge of the sincerity of his professions. These things were not enough alone to have destroyed the sentiments of duty and allegiance of our people to us; and therefore they added the falsest and blackest of calumnies against us and our dearest son the Prince of Scotland and Wales, whom they impudently called an impostor. But how notoriously they failed in the probation thereof is manifest to all mankind. Our overturning the laws and introducing arbitrary power was apprehended, though no instance could be given except that we disposed of places depending on us alone to such as we thought deserved them, and that we gave, and would have by law established, a liberty of conscience which, we were convinced, our people wanted. But how much less are these things which our people seemed to fear than the real ills which are fallen upon them since,—taxes, levies, imprisonments, arbitrary and against law, perjuries and contradictory oaths imposed, as if there were no God to punish such wickedness; men turned out of their freeholds by the lawless and ungoverned rabble; the driving of our subjects by an armed force of strangers against their will to forego their own native country, and fight for a foreign interest under strangers and such like, the highest part of what must needs happen, robberies, plunder, rebellion, treason, bloodshed, murder and all the grievous sins, that cry to heaven for vengeance, must needs be the effects of their reformation, nor is it possible ever to settle our Kingdoms upon any certainty, seeing so long as any of our posterity in the male line is extant, all that is done against our or their authority is treason, and the actors, their estate as well as persons, liable to it; a mischief hanging over their rebellious heads and those of their posterity, from which they never can have relief except from us or our authority. Every sentence given is in itself null and void, and every man, how guilty soever, executed by their sentence is murdered, and the judges liable to God and us for what they shall do in that behalf. But this is what every man is convinced of in his own conscience, and there is nothing can hinder these rebels from

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returning to their duty but the hopes that, by joining hand in hand their iniquity shall pass unpunished, though God Almighty has positively said the contrary. These things considered by you has [*sic*] so much distinguished you from others of our subjects, that we doubt nothing of your firm and faithful adherence to the true interest of our Crown, and therefore we do assure you that so soon as it is possible for us to hold a Parliament free from constraint in that our ancient Kingdom, we will do it, and in that Parliament we will secure the Protestant religion and liberty of conscience, so as that it shall not be in the power of any sect or party to encroach upon another: And if there be any whose principles bade them to such uncharitable practices, we will seclude them from it by the advice of our said Parliament, wherein we will likewise provide for the National Church as established by law, and secure the liberty of our people so as shall be most just and satisfying to them as likewise their properties, privileges and immunities, and in everything give that true satisfaction to all our loyal people, which they in justice can expect from us and never can have but by us. And whereas many have been by fear, weakness or other reasons drawn into rebellion against their inclinations, we are resolved in that Parliament to grant an Act of Oblivion and Indemnity to such as they shall advise us, and such as serve us well shall at the same time be fully rewarded from the ruins of our enemies. That this may the sooner and more effectually be done, we do hereby will and require you to meet and choose a President, whom we do hereby authorise to proceed amongst you, and to consult with you upon what is most fit to be done for the good of our service, and how to free yourselves and native country from the tyranny and oppression you and it lies under, how to free yourselves from slavery, and once more make peace and plenty flourish amongst you. And since it is absolutely necessary that as many of our faithful subjects as possible, be put in arms for the vindication of our authority and for their own safety: We will and require you to employ our revenue for their maintenance, and likewise to employ the estates of all such as are in rebellion against us in the best manner for the same end. And since we have thought fit to empower our Right trusty and well beloved Cousin and Councillor the Viscount Dundee to be our Lieut.-General of our forces in that Kingdom, we doubt not of your concurrence with him for the good of our service. It is well known to you of what importance it is to us to have our castle of Edinburgh effectually relieved, and our right trusty and entirely beloved Cousin and Councillor the Duke of Gormond [Gordon], who has so eminently served us there, to be provided of such things as may be necessary for his further defence thereof, and therefore we hope you will do what you can in that respect. And since we are ready to assist you with all that may be wanting to you at present, we desire to hear from you what you would have us send, and where it shall be sent, and we shall quickly comply with your desires. Such as stand by us and our interest at this time we are resolved to distinguish, so as the world shall see the esteem we have of them. But we will mix our favour with justice, and by that our enemies shall have the measures from us which they have bought so dear at the price of their consciences and loyalty. Thus having committed what relates to our Service entirely to you, and absolutely relying

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upon your loyalty, affection and zeal for our service, and expecting a speedy and frequent accounts [*sic*] of your proceedings, we bid you most heartily farewell. Given at our Court at Dublin Castle, the 16th day of May 1689, and in the fifth year of our reign.

By his Majesty's Command."

Endorsed. Letter to the Scotch Convention. [There is a duplicate of this letter, one copy having been enclosed in the letter to Briggs (see preceding paper) and the other in that to Lane (Annex a⁷). Read on 19 June. MS. Min. of date.]

(a¹⁰.) Printed Proclamation of James II. (6 copies), as follows:—

"JAMES R.

James the Seventh, by the Grace of God, of Scotland, England, France and Ireland King, Defender of the Faith etc. To our Lion King at Arms and his brethren, Heralds, Macers, and Pursevants, Greeting;

Whereas the wicked and unjust designs of our enemies do at least appear in their natural colours, and their pretended reformation of abuses has ended in the usurpation of our regal right in our Kingdom of England, and that the same wicked design is still carrying on to enslave the people of our ancient Kingdom of Scotland, upon the same plausible and false pretences; which if it were ever so unfortunate as to consent to, must needs end in bloodshed and war. We therefore, having a constant care of our people's concerns, as becomes their King and an affectionate Father of his country, do think fit to let you know, That as it was never our design to suffer any to be persecuted on the account of their religion, so we never resolved to impose our own on any man, especially by the ways of force, a thing perfectly contrary to our nature. And wherever anything of discountenancing our opposers in the matters of religion appeared in our proceedings, our displeasure was at the opposing of liberty of conscience in general, and not our own religion in particular. Nor did ever that go farther than the taking from such opposers what was our own, the which we might have done at all times without giving any reason for it.

No man can think (notwithstanding the impudent assertions of our enemies) that ever we were so unwise as to pretend to bring two numerous Kingdoms of Protestants to become Catholics by the force of a few of that religion, altogether unable for such a design had they been willing, and more unwilling had they been able. And that we never intended to use foreign force, is now evident to all mankind, since even the Prince of Orange and his adherents, who so impudently asserted it, have so notoriously failed in the proof thereof. But we could not be so impious, nor have so little charity for our people, as knowing our own religion to be the best, not to wish and invite them to be of it by all the ways of softness and paternal concern, resolving by our example to lead, and not by force to drive our people to their happiness.

Upon which design we granted a liberty of conscience in matters of mere religion, reserving to the National Religion, established by law, its full right to all it was in possession of; except the power of hurting others who differed from them in persuasion. And to shew the sincerity of our intentions therein, we were, and are still willing to confirm the same in Parliament.

This liberty of conscience was thought reasonable by that our Kingdom then, and we are confident is so still.

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It is most easy to see in the annals of former times the event usurpations and other encroachments upon the Royal right have had in that and our other Kingdoms, and wish our people now to be wise at the expense of such who have suffered for the like attempts; and even in our reign, our Parliament of that our Kingdom has declared that all such designs have ever ended in the utter ruin of the author.

We hope they will take care to prevent falling into such dangers, and remember that we are their King, to whom they owe their allegiance by Divine precept as well as by our inherent right; a property belonging to us, which they can never encroach upon without committing a grievous sin against Almighty God, as well as high treason against us; and the Parliaments of that our Kingdom still have owned our crown to depend upon God alone, to whom we are answerable for the administration of our Regal power.

The usurpers of our right in our Kingdom of England pretended to reform abuses, but the event has been the committing the worst of crimes, under the pretence of rectifying imaginary faults; usurping our power, which they pretended to free from evil counsel; raising divisions betwixt us and our people, which they pretended to heal; overturning that law they pretended to defend; and destroying the being of Parliament by an illegal multitude, turn Parliament by their own authority. Property, the just right of King as well as people, they have invaded in us the head, and have manifestly encroached upon the liberty of the subject. And even most things which they cried so loud against us for demanding, (though all the world is convinced we never desired, nor would have had them but by consent of a legal Parliament) they have now done by their illegal power, and thus deforming the face of that Kingdom, have entailed upon themselves a ruin many of them can never prevent.

We would have our people of that our ancient Kingdom consider these things whilst they have yet the time; and what difference there is betwixt being good and loyal subjects, and ignominious traitors, especially when by being the first they may have that real security which can never be other than imaginary in the last, and that but of a short continuance, whilst they entail upon themselves and their posterity war and bloodshed here, and an after reckoning with that Almighty God who is a Revenger of the oppressed: that God who will try and punish injustice in the people as well as in the King.

Let our people consider likewise how our dearest son the Prince of Wales was called an impostor by the Usurper and his adherents. But God Almighty has shown that the Prince of Orange himself was the impostor; who, notwithstanding the impudence of his assertions, durst never enter upon the trial of that matter. What can you expect from men who can make use of such base means to attain to their unjust ends? Avoid their counsels to prevent your ruin, for we will not cheaply part with our right; and such as stand by us shall quickly find that we have a force sufficient to put them beyond the fear of their and our enemies.

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We do upon all these considerations require and command all our loving subjects, on the account of their duty to God, and to us their King, to stand to our Royal interest, to declare for us, and to put themselves into a posture of defence, such as they are able, that they may be ready to come to our host upon the first warning given by us, or such as are commissioned by us. And we do hereby require and command all our magistrates of boroughs, as they were in employment at Michaelmas last by past, to continue in their employments, to keep their respective towns in due obedience to us, and to suppress any tumults which may be raised by evil and disaffected persons amongst them. And we require all Sheriffs and their deputies, as they were at Lammass last, to continue in their respective employments till our further order; and generally all our subjects to do their duty to us as becomes good subjects, fearing God and loving their King.

And that our subjects may the better know our Royal inclinations, we have thought fit again to declare that we will confirm and maintain the Protestant Religion as established by law, and that we will allow a liberty of conscience and exercise of religion to all Christians who will live peaceably under us; reserving to the National Protestant Religion all she is in possession of, or was in possession of at any time since the return of our Royal Brother in the year 1660; and that all our subjects may be convinced of the sincerity of our Royal intentions in this, We do declare that we will confirm the same, together with the property and liberty of our subjects in Parliament, so soon as it is possible for us to have one free from all constraint. And this, being all that our subjects can possibly desire for their quiet, we hope will content the reasonable; and such as are otherwise, we trust in God, and in the justness of our cause, to find means quickly to reduce.

But that such as have been led into rebellion and other crimes against us by our absence, and the confusion of the times, and are willing to return, may not be involved in the punishment of the obstinate; we do hereby declare that we will pardon and remit all crimes committed against us, except to such as have voted against us, our authority and right, or for the Prince of Orange in that late and illegal Convention held at Edinburgh on the 14th of March or thereabouts, and excepting likewise all such as came from Holland with the Prince of Orange; providing such as are not excepted shall immediately join with us, or such as we shall appoint to receive and conduct them by our Commission under our Royal hand and signet.

It is our further will and pleasure, that all who have any part of our revenue in their hands, make payment thereof only to such as shall be commissioned by us to receive the same after the date of these presents, as they will answer the contrary at their perils. We likewise will and require that all our Archbishops, Bishops, and inferior clergy continue their prayers for us, our Royal Consort the Queen, the Queen Dowager, and our dearest Son the Prince of Scotland and Wales, and Royal Family; and that nothing deter them from the duty they owe us, nor from giving good example to our people committed to their charge by their dutiful and loyal deportment.

And we do most solemnly declare, that as we have at all times hitherto shown the mercifulness of our nature to many amongst you, who have answered our favour with the basest of ingratitude, so we are resolved at this time to punish the obstinate,

so as that our justice shall deter others in after ages from committing such crimes. Nor can the world blame us if, after what we have met with, we extirpate such as shall have committed such crimes, and still persist in them against us.

Lastly, our will and pleasure is that, these our Letters seen, you pass to the respective market-crosses of all our boroughs-royal, and there at the ordinary hours make publication of this our Royal Proclamation, affixing copies thereof, that so the same may be known to all our people, that none may pretend ignorance thereof.—Given under our Royal Hand and Signet at our Court in our Castle of Dublin the first day of April, 1689, and in the fifth year of our reign.

By his Majesty's Command,
MELFORT.

God save the King."

(a¹¹.) Printed Proclamation of James II., 6 copies, as follows:—

" JAMES R.

James the Seventh, by the Grace of God, King of Scotland, England, France and Ireland, Defender of the Faith, &c., To all our loving subjects, Greeting. Whereas several of our subjects, men of pernicious principles and wicked designs, have taken upon themselves, contrary to the law of God, their natural allegiance to us, their lawful and undoubted Sovereign, the known laws and Acts of Parliament of that our ancient kingdom, to meet in an assembly to call themselves the States of that kingdom, and therein treasonably and wickedly to question our authority, and to judge of our proceedings, and finally to dispose of our Imperial crown, which we hold from God alone, usurping our power, which is not communicable to any, whether single persons or bodies collective, without our express authority be interposed thereto; and that these wicked and lawless persons still go on to oppress our people by heavy burthens, imprisonments, levies and other things grievous to our subjects, contrary to all law, justice, and equity, as well as to our Royal right and prerogative: That they have overturned the laws and constitutions of that our ancient kingdom both in Church and State, contrary to their oaths so oft and so solemnly taken, uniting and joining themselves with the unnatural usurper of our royal right, the Prince of Orange and his adherents: By all which they have incurred the guilt and pains of high treason and rebellion against us and our authority: Therefore we do hereby declare the said wicked persons assembled as aforesaid, consenting to such proceedings, Rebels and Traitors, willing and requiring all you our good subjects to take notice hereof, that you give them no obedience, concourse, or assistance; but that to the utmost of your power you rise in arms against, assault, attack and destroy them, their assistants and abettors, or to take and apprehend them, and bring them to condign punishment, according to the laws and Acts of Parliament of that our ancient kingdom; their estates, goods and possessions to seize and employ for us, or your own subsistence in our service. And for whatever shall happen in prosecution of this our will and pleasure, this shall be, to you and all others concerned, a sufficient warrant, authority and command, and for all bloodshed, slaughter, mutilation, fire-raising or other damage done to these rebels, their accomplices, assistants, abettors, their lands, inheritances, goods or possessions, a sufficient indemnity, pardon, warrant, and

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approbation for now and ever; the which all our Judges, and others concerned are to take notice of and explain in the most favourable and extensive sense the words will bear, in favour of our said subjects, obeying our orders as abovesaid. We think fit likewise to declare that we will make good to our subjects all that ever we promised to them in any of our Royal Declarations in favour of the Protestant Religion, liberty of conscience to all who live peaceably, and rights, liberty and property of our people. Given under our Royal Hand and Signet at our Court at our Castle of Dublin this fourth day of May, 1689, and in the fifth year of our reign.

By his Majesty's Command,

MELFORT.

God save the King."

[This and the preceding papers (Annex *a*¹⁰) are probably those enclosed to Lane and Briggs (Annexes *a*⁷, *a*⁸) to be reprinted and distributed. See MS. Min. 19 June.]

(*a*¹².) Printed copies (5) of an Act passed at the Parliament begun at Dublin the 7th day of May, 1689, intituled an Act of Recognition of the just and most undoubted rights of His Majesty's Imperial Crown. "Most Gracious Sovereign. We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal and Commons in this present Parliament assembled, most joyfully acknowledging the transcendent mercy of Almighty God in giving your sacred Majesty a safe and happy arrival to this your Kingdom of Ireland, in a glorious and peaceable manner, in despite of the conspiracies and machinations of execrable traitors and power of foreign enemies, cannot without horror consider the detestable defections and treasons of many of our fellow-subjects, as well in this realm, as in your Majesty's other Kingdoms, who, being desperately wicked, and hardened in impiety by unspeakable treachery, lately assisted the Prince of Orange, against the laws of God and man, unnaturally to invade your kingdom of England, and there by odious arts and devices strengthening themselves in power and faction, by seducing from their allegiance great numbers of your Majesty's subjects of that Kingdom, first forced your Majesty to withdraw your sacred person from your palace of Whitehall; and soon after your return, to the great joy of many thousands of your loyal subjects in those parts of England, put your Majesty under a guard of foreigners, compelling you to go to Rochester, where you remained in restraint, until it pleased God, of his infinite mercy to your Majesty and these kingdoms, to give you a happy deliverance out of the hands of your enemies, by escaping into France; from whence your Majesty, to the unexpressible joy of all your loyal subjects, happily came into this kingdom; and the said Prince of Orange having, by the detestable assistance of such traitors and enemies, first plotted and contrived the ruin and destruction of this excellent monarchy, and of all the rights and liberties of your subjects, found it necessary, in order to the carrying on of his pernicious designs, by aid of the said traitors and foreign enemies, to throw down all the bulwarks and fences of law, and to subvert the very being and constitutions of Parliaments; that so at last he and they might make their way open to the unnatural and perfidious usurpation afterward by him and them accomplished; who first professing, by several deceitful declarations, that his intent was not to deprive

your Majesty of your Imperial Crown, but to preserve the Protestant religion and rights of your subjects by him speciously, but most falsely, pretended to be subverted, under the abusive and unknown name and authority of a Convention of Lords and Commons meeting at Westminster, against the laws of your Majesty's Kingdoms, by force and fraud, and an unparalleled example of impudence and injustice, they took upon them to declare your Royal throne vacant; and (as if it were their right to dispose of the same) offered your Imperial crown to the said Prince of Orange, in such horrid manner and odious circumstances, as is but too well known to the world; which execrable fact nothing can equal but the barbarous murder of your Royal Father, of ever blessed and glorious memory, by a party of wretched men, from whom these late traitors have borrowed and revived their desperate anti-monarchic principles; and because by this abominable action a most insupportable shame and infamy may be imputed to millions of your Majesty's subjects no wise guilty of this treason; We therefore, your Majesty's said dutiful and loyal subjects the Lords Spiritual and Temporal and Commons in Parliament assembled, being touched with a true sense of our duty, do hereby renounce, abominate and protest against that impious fact, the late usurpation of the said Prince of Orange and the most unparalleled treason and perfidiousness of such of your Majesty's subjects as have by their defections in any sort promoted the same, and all proceedings tending thereunto; And do beseech your Majesty that it may be declared that the said horrid usurpation and all acts tending to and promoting of the same are against the law of God, nature and rations, and have fixed an indelible infamy on the perjured heads of such as have been guilty thereof, all or most of these offenders having sworn that it was not lawful to take up arms against your Majesty on any pretence whatsoever; And the said perfidious criminals, being conscious of their guilt and breach of faith to God and their natural sovereign, after they had manifestly violated the before-recited Oath, and also broke the Oaths of Allegiance and Supremacy, have by their own usurped authority taken upon them to abrogate the said Oaths, and invented new and impious assurances of fidelity to the Usurper; We therefore, your Majesty's most loyal and most dutiful subjects aforesaid, out of our bounden duty to God and your Majesty, and for the vindication of ourselves from any crime that may be imputed to us by reason of the said treasonable transactions, and the several rebellions in this kingdom formed by domestic traitors in consequence of the same, and that the world may know the care and duty which oblige us to manifest your Majesty's most undoubted right to your Imperial crown, and that the same may be transmitted to our posterities, do hereby acknowledge, with one full voice of tongue and heart, that your Majesty is our lawful and undoubted liege, sovereign lord and king; and as we cannot make this recognition too often or enough, so can there be no way or means so fit as at this time both to sacrifice our unfeigned thanks to Almighty God for blessing us with a sovereign adorned with the rarest gifts of mind and body, and upon the knees of our hearts to acknowledge our most constant faith, obedience and loyalty to your Majesty, and, next after your Majesty, to his Royal Highness the Prince of Wales, your most undoubted son and heir apparent, our second hope, joy of our hearts and breath of our nostrils, and your Royal

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progeny, in this your High Court of Parliament, where the whole body of the realm and every particular member thereof, either in person or by representation upon their own free elections, are by the laws of this realm deemed to be present, do from the bottom of our hearts yield to the Divine Majesty all humble thanks and praises for your Majesty's most gracious, just and merciful reign over us, and in most humble and lowly manner do beseech your most Excellent Majesty that, as a further memorial to all posterities for ever, to remain amongst the records of your High Court of Parliament, of our abhorrence of the before-mentioned inhuman usurpation and treason, and of our loyalty, gratitude, obedience [and] humble affection to your Majesty, following herein authentic precedents of many former good Parliaments, it may be published and declared in this High Court of Parliament, and enacted by authority of the same, that we, being bound thereunto by the laws of God and man, do recognise and acknowledge, and thereby express our unspeakable joys, that immediately upon the dissolution and decease of your Royal brother King Charles the Second, of ever blessed memory, the Imperial Crown of this realm, and of all other your Majesty's kingdoms and dominions, did, by inherent birth-right and lawful and undoubted succession, descend and come to your most excellent Majesty, as being lineally, justly and lawfully next and sole heir of the Blood Royal of this realm as aforesaid, and that, by the goodness of God Almighty and lawful right of descent under one Imperial Crown, your Majesty is of this Kingdom, and of England, Scotland and France, the most potent and mighty King; and thereunto we do most humbly submit and oblige ourselves, our heirs and posterities for ever, until the last drop of our blood be spilt: And we do hereby further declare that your Majesty's right to your said Imperial Crown is originally, by nature and descent of blood, from God alone, by whom Kings reign, and not from your people, nor by virtue or pretext of any contract made with them or any Act of your estates on that behalf; an assertion which we abominate, detest and condemn as false and traitorous, taken up formerly and since revived by the most odious parricides that ever lived; And do hereby further publish and declare that, by the undoubted fundamental laws of this Kingdom and of England, neither the peers of this realm, nor the Commons, nor both together in Parliament, nor out of Parliament, nor the people collectively or representatively, nor any other persons whatsoever, ever had, have, or ought to have any coercive power over the persons of the Kings of this realm; and that our allegiance to your Majesty, our natural liege Lord and Sovereign, is indissoluble and cannot be renounced by us or our posterities, which allegiance of us your subjects is due to your Majesty in your natural person, from which the Royal power cannot be separated. And we do further recognise and declare that within all your Majesty's realms and dominions the sole and supreme power, government, command and disposition of the Militia and of all forces by sea and land, and of all forts and places of strength is, and by the laws of this realm and of England ever was, the undoubted right of your Majesty and your Royal predecessors, Kings and Queens of these realms; and that both or either of the Houses of Parliament or the people collectively or representatively, or a convention or assembly of Lords Spiritual, Temporal and Commons, or any of them, on any

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account whatsoever, cannot nor ought to pretend to the same, nor can or lawfully may raise or levy any war offensive or defensive against your Majesty, your heirs and lawful successors. And for the further abhorring and condemning of such wicked rebellious principles that have been distilled into the minds of the people of these your Majesty's kingdoms, and to prevent for the future (as much as it is possible) the contagious venom of such detestable opinions and sentiments, We do hereby further recognise, publish and declare that, as it is against the law of nature to hinder or deprive your Majesty's subjects of your Royal protection, so it is directly against the same law, and the laws and statutes of this realm thereon grounded, to hinder or deprive your Majesty from the service of your subjects in peace or war, (being inseparably annexed to and inherent in your Royal person) of what persuasion in religion soever they be, when your Majesty shall have occasion to use the same, whereof your Majesty is the only judge; and that it is utterly unlawful for your Majesty's subjects of this or any of your Kingdoms, on any pretence whatsoever, actually to resist your Majesty, or our lawful hereditary King for the time being, by violence or force of arms, or to withdraw their allegiance from your Majesty, your heirs and lawful successors, but that the decision in all cases of a misused authority by our lawful hereditary King (if any such should happen), must be left to the sole judgment of God, the King of Kings, and only ruler of princes. All these true and faithful declarations of your Majesty's undoubted rights, amply set forth in divers Acts of Parliament of this and precedent ages, and known to be the fundamental laws of these your kingdoms, we will for ever support and maintain against the said Usurper and his adherents, and all other rebels and traitors, with the utmost hazard of our lives and fortunes; which we most humbly beseech your Majesty to adorn with your Royal assent, without which they cannot be either complete or perfect, nor remain to posterity according to our humble desire, as a memorial of your princely and tender affection towards us, and of our sincere loyalty and duty to your Majesty."—Printed at Dublin, 1689. [Enclosed in the packet to Throckmorton (Annex a⁴). See MS. Min. 19 June.]

- (b.) 19 July. Draft Order reviving the Committee appointed on 15 June to look into the Miscarriages of Ireland, and empowering them to name a Sub-Committee to inspect the Minute Books of the Committee of Council for Ireland. L. J., XIV. 286. *In extenso.*
- (c.) 23 July. Order of revived Committee, appointing a Sub-Committee to inspect the Minute Book of the Committee of Council for Irish Affairs. [Com. Book 23 July. On the 26 July, this Sub-Committee applied for a Clerk, and it was ordered that Mr. Walker should attend them. On the 29th, it was ordered that the House should be moved to address the King for the Minutes of the Council since his accession, for the perusal of the Sub-Committee, and on 6 Aug. E. Rochester delivered in a report in writing from the Sub-Committee. Com. Book of dates.]
- (d.) Papers relating to the proceedings of the Committee of the Privy Council for the affairs of Ireland, viz:—
- (d¹.) Paper endorsed "Copies desired by the Committee of Lords, 26 July 1689," and noted "Mr. Blathwaite to get the copies of all these orders, letters, and minutes by Wednesday next. This

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Committee to meet on Monday, the 29th July at 4." It contains a list of the extracts from the Council Books given in the next paper.

(d².) MS. Book containing copies of entries in the Journal of the Committee of the Privy Council for the affairs of Ireland, that were desired to be made by the Lords' Committee. The contents, abbreviated where necessary, are as follows :—

A COMMITTEE OF IRISH LORDS AND COMMONS.

Earl of Roscommon.	Mr. Thomas Coote.	Mr. Arthur Meredith.
Earl of Drogheda.	Sir Henry Ingoldsby.	Mr. Rochford.
Lord Blessington.	Sir Oliver St. George.	Mr. Davis.
Lord Lisburne.	Sir Richard Reynolds.	Capt. Brookes.
Lord Sauntrey.	Sir Francis Blondell.	Mr. Ethlin.
	Mr. Osborne.	Mr. Cairnes.
		Capt. Brabson.
		Mr. Paine.

THEIR PROPOSALS, 17 Feb. 1688.

That 1,000 men, with supernumerary officers to discipline the new levies, and a considerable quantity of arms and ammunition, with an able engineer, be forthwith sent to Londonderry.

That a number of men of war be speedily ordered to cruise between Ireland and France, to prevent any succours from France, which are daily expected there by the Papists.

That a Declaration be issued, commanding the Earl of Tyrconnel to give up the sword and Government, and the Papists, and such as have joined with them in Ireland, forthwith to lay down their arms, otherwise that they and all that assist them be declared rebels and traitors, offering such terms if they obey as his Majesty in his great wisdom shall think fit.

They humbly pray that these Proposals may be looked upon only as what they judge may at the present in some measure encourage and preserve the good subjects of that Kingdom; but they fear that a potent army, well provided with all things convenient, will be necessary to reduce Ireland to, and preserve it in, his Majesty's perfect obedience.

A List of the Colonels to whom his Majesty has already sent Commissions to raise horse, foot and dragoons in the North of Ireland, viz^t, in the Counties of Antrim, Down, &c., which are not yet armed. *Noted* in margin: Mr. Hamilton's List of Colonels, &c.

Earl of Mount Alexander	} Horse.	Sir W. Franklyn	} Foot.
Lord Blaney		Sir John Magill	
Sir Arthur Rawdon	} Dragoons.	Capt. Fra. Hamilton	
Mr. Skevington		James Hamilton of Newcastle	
		James Hamilton of Tullymore	
		Mr. Upton	
		Mr. Montgomery	
		Capt. Leighton	
		Capt. W. Lesley	

To the Right Hon^{ble}. The Lords Committees of his Majesty's Most Hon^{ble}. Privy Council for the Affairs of Ireland.

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The humble Representation of several of the Nobility and Gentry of the Province of Munster. *Noted in margin: Read 20 Feb. 1688.*

1. That upon his Majesty's late prosperous success here in England, the Lord Deputy of Ireland augmented the army there to a number which is now grown formidable, and as the method was to oblige all that took Commissions to subsist their men for three months, so those, being many of them men of no fortune that undertook this work, have hitherto lived upon the English, seizing the corn and driving away the cattle of the Protestants, and terrifying them to that degree that, for the safety of their lives, they fled with what goods they could carry away to the next houses or castles of strength, for fear of a massacre.

2. That the Government, taking offence thereat and calling it by the name of a dangerous Association, did require them by Proclamation to desert those places and return to their habitations, where they must inevitably famish, or else to be prosecuted at law as rebels and traitors.

3. That lately the Government hath sent down Commissions to such Protestants as they reputed most obnoxious, intending it doubtless as a snare upon them, that, if they refused, then to imprison them as dangerous and suspected to the Government, or, if they accepted, then to become liable to martial discipline, and even to fall upon their fellow Protestants if by their superiors required thereto.

4. That the gentlemen of the country, who hitherto have been up in expectation of help (having only sent away their wives and children that are come over in great numbers), are now under the inevitable necessity of deserting also; it being impossible to keep them under the terror of those difficulties, which now hang over their heads.

5. That, by computation, in the County of Cork only, there are about 6,000 fighting men and about 1,200 serviceable horse, and were there but an army of 5,000 or 6,000 men landed from hence, in any fit part of the Province, these men would break through all difficulties to find out such a succour and to increase their force.

6. That this Province abounds in good harbours, and is most neighbouring and exposed to France and to the succours which may thence be presently poured in, and make the present difficulties quite insuperable.

Yet, by reason of the late desolation, great care must be taken to furnish from hence all sort of forage and provisions, as well as all other materials of war. For the Irish have already by computation not taken less than 12,000 head of cattle from the County of Cork; and as they now drive them to the mountains for their future stores, so they salt and barrel up what quantity of provisions they can, having from one English gentleman taken 500 barrels of salt for that intent. The tillage of that country has been so generally neglected that, whereas the common people subsisted upon barley and oats, there is great probability of a famine to ensue by reason of the great want thereof.

His Majesty has vouchsafed to order some succours for the North, such as the immediate necessity of that part required;

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And whether this Province, already so afflicted, and so liable to the French, may not more profitably be succoured by a small army now, to prevent desertion of the Protestants, than by a numerous one hereafter,

Is most humbly submitted to your Lordships.

At Whitehall, the 20th Feb., 1688.

By his Majesty in Council.

Note in Margin: Report of the Irish Committee about supplies for that place approved, and Commission and Instructions for Col. Lundy.

Upon reading this day a Report from the Committee for the affairs of Ireland, as follows:—

May it please your Majesty.

Your Majesty having been pleased to refer to us the consideration of the present state of the affairs of Ireland, We are humbly of opinion

That Captain James Hamilton, who is now at Chester by your Majesty's Order in his way for Ireland, be forthwith despatched thither, and that he carry with him a Commission with instructions to Lieut. Col. Lundy to command the town of Londonderry.

And that, besides the stores of war he hath in charge, he likewise carry with him 1,000*l.* in money, and deliver it to Lieut. Col. Lundy for the necessary occasions of that garrison; yet so nevertheless that, before he deliver the said Commission and Instructions and what is now sent for the supply of that garrison, he first cause him, the said Lieut. Col. Lundy, to take the oath (herewith sent) on board the ship whereon he goes, in the presence of the Mayor or the Chief Civil Magistrate of Londonderry.

And that the said Captain Hamilton have power to demand and receive the said 1,000*l.* of Mr. Anderton, Officer of the Customs, or Mr. Frith, Officer of the Excise of Chester, or both or either of them, so as to make up the said sum; and that they have directions to draw Bills on the Commissioners of the Customs or Excise for the same, or so much thereof as they can possibly furnish before his departure for Ireland; And also the said Mr. Anderton is to have directions to hire a merchant ship (the charge whereof is to be allowed him), to carry the said stores of war to Londonderry, under the convoy of the frigate already appointed for that service.

All which etc.

His Majesty was pleased to approve of the said Report, and did order that the Earl of Shrewsbury do issue all necessary orders for putting it in execution.

Note in Margin: Col. Lundy's Instructions.

Instructions to our trusty and well-beloved Lieut. Col. Lundy, Commander-in-Chief of the Town and Garrison of Londonderry, or in his absence to the Commander-in-Chief there.

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Having taken into our consideration the danger that at present threatens the Protestant interest in that kingdom, and how much it concerns the good of our subjects that all our garrisons there be in as good a posture of defence as may be, We therefore, reposing trust and confidence in your good affection and courage, have thought fit hereby to direct you.

1. That you do, upon receipt hereof, buy and furnish that garrison with such necessary provisions and ammunition as may enable it to subsist and make defence for some time in case of any attack.

2. That for its better defence you do break down such bridges and cut open such dykes or sluices as in your judgment shall be thought necessary.

3. That you take especial care in preserving the gates of the town, the guns with their carriages, as well as the fortifications of that place, in good order and repair, and that you add such works as you shall find necessary.

4. That, on prospect of any more imminent danger, you do pull down such houses, and fell or cut down such trees, as may prove in the least prejudicial to its defence.

5. That you put and set up palisadoes in such places as shall be thought necessary, and that you do and provide for the defence of that place what else you shall, upon due consideration, judge requisite.

6. And to that end you are to receive and dispose of the 1,000*l.* which shall be remitted to you, to the best advantage of our service, and the safety of that garrison, and to transmit an account thereof hither.

7. That you also send hither from time to time, as opportunities offer, a true and particular account of the condition of that place to one of our Principal Secretaries of State.

8. That you also cause the Oath herewith sent you to be taken by all the officers, both civil and military, in that town and garrison.

Given etc. 21 February 1688.

Note in Margin : Mr. Hamilton's Instructions.

Instructions to our trusty and well-beloved James Hamilton, Esq., appointed by us to carry arms and other provisions of war to the town of Londonderry in our Kingdom of Ireland.

WILLIAM R.

You are to receive into your charge, as soon as they shall be put on shipboard, the arms, ammunition and stores of war which we have directed to be sent to Ireland, with a Commission and Instructions to Lieut. Col. Lundy, and the sum of 1,000*l.*, which we have ordered the officers of the Customs and Excise at Chester to pay unto you, to be delivered by you to the said Lieut. Col. Lundy, who is to dispose thereof for the necessary occasions of that garrison; and you are to take care that the ship on which the said arms and stores of war shall be laden do not leave the English coast without the convoy of a frigate, which we have appointed to accompany the said ship to the said town of Londonderry. And at your arrival with the said ships

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upon or near the coast of Ireland, you are, if you see convenient, to deliver fifty barrels of powder to any officer commissioned by us within the county of Down or thereabouts, in order to the better defence of those parts, taking the receipt of the said officer for the same; and you are, as soon as may be, to inform yourself in the best manner at what distance the enemy shall be at that time from Londonderry, and with what safety the said arms and provision of war may be put on shore at or near that place, and secured within the said town for the use and defence of the Protestants against the Papists, according to our directions in that behalf; and, in case the same may be done without apparent danger, you are to proceed accordingly in the execution thereof, and to deliver the said Commission and Instructions, money, arms and stores to the said Lieut. Col. Lundy or the Commander-in-Chief of the said town, taking his receipt for the same. Provided nevertheless that before you deliver the said Commission, Instructions, money, arms and stores of war to the said Lieut. Col. Lundy, or the Commander-in-Chief of the said town, you first cause him to take the Oaths herewith sent, on board the ship whereon you shall arrive there, in the presence of the Mayor or Chief Civil Magistrate of Londonderry; but if he shall refuse the said Oaths or any one of them, or that you shall find the approach to the said town difficult, and the landing or delivery of the said arms and stores insecure, you are then not to land the said stores, or part with the said Commission, Instructions and money, but to cause them to be brought back on board the said ship under the same convoy to some port of England, where, upon notice thereof given to us, we shall signify our further orders thereupon. And for so doing etc. Given etc., Whitehall, the 22nd Feb. 1688.

By his Majesty's Command,

SHREWSBURY.

Here follow two letters from E. Shrewsbury (1) to Mr. Anderton, officer of the Customs at Chester, to hire merchant ships to carry stores to Ireland, and (2) to Mr. Anderton and to Mr. Frith, one of the officers of Excise at Chester, to supply Capt. Hamilton with 1,000*l*.

The Declaration of William and Mary, King and Queen of England, France and Ireland, to all their loving Subjects in the Kingdom of Ireland.

WILLIAM R.

Whereas it is incumbent upon us to take care of and preserve all our subjects within our dominions of what persuasion soever in matters of religion; and we, being highly sensible of the miseries our Kingdom of Ireland is and may be exposed to, by the forces there raised and kept under pretence of religion, at the instigation of Romish priests, and by the influence of foreign counsels, in opposition to us and our Government; and being

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desirous to prevent the calamities and destruction that must fall upon our people in that Kingdom, in case our forces now ready to enter the said Kingdom (which we doubt not but with God's help may be sufficient to reduce it to due obedience) shall proceed to effect the same, We do hereby declare and promise to all our subjects whatsoever within that Kingdom full and entire pardon and indemnity of all things by them acted, done or committed by virtue or colour of any authority or pretended authority within the said Kingdom, and a full and free enjoyment of their respective estates according to law, in case upon notice of our Royal will and pleasure, signified in this our Declaration, they shall lay down their arms and retire themselves to their respective habitations and places of abode, at or before the tenth day of April next, and there shall peaceably behave themselves, and live as good subjects ought to do. And we do hereby further declare and promise to all our subjects of the Romish Church, that hitherto have not taken arms, or that shall, upon notice of this our Declaration, lay down their arms and retire and live as aforesaid, That they shall for the future have all the favour for the private exercise of their religion that the law allows, and we can now grant to them, and that we shall speedily call a Parliament in the said Kingdom and therein promote a further indulgence to them. And we do hereby further declare That if, notwithstanding this our Declaration, any of our subjects shall continue in arms in opposition to us, that we shall then think ourselves free and clear of all the blood that may be spilt, and of the destruction and misery which by reason thereof may be occasioned, and we shall look upon ourselves to be justified before God and man in our proceedings by force and arms against them as rebels and traitors; And such we do hereby declare all those to be, who shall act as aforesaid against us and our authority as is herein expressed, and that the lands and estates of all such as shall after notice of this our Declaration persist in their rebellion, or be in any wise abettors thereof, and which by law will be forfeited unto us, shall be by us distributed and disposed to those that shall be aiding and assisting in reducing the said Kingdom to its due obedience. Given at our Court at Whitehall this 22nd day of February 1688, in the first year of our reign.

Letter from Mr. Anderton at Chester to William Blathwayt, Esq., notifying the payment of 595*l.* 16*s.* 8*d.* to Captain Hamilton, who is going down to Neston and hopes to sail this tide. *Dated* 25 Feb. 1688.

Subscribed in Margin. These are true copies of the entries in the Journal of the Committee of the Privy Council for the Affairs of Ireland in the month of February 1688 that were desired to be made by the Lords Committees of the House of Peers. *John Nicholas.*

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Conditions upon which the Colonels are to raise their regiments for the Service of Ireland.

Each regiment is to consist of thirteen companies of 60 private soldiers, 3 serjeants, 3 corporals and 2 drummers in each company; and as soon as 25 soldiers shall be raised in each company, they are to be mustered and enter into pay with all the Commission officers, as afterward so many as shall be raised from time to time to make up the full complement. Each company is to be completed and clothed within one month from the date of the raising order, whereupon there will be allowed for the raising of each private soldier 20s. as levy money over and above the pay growing due from the first muster. And for the better enabling each Colonel to clothe his regiment, his Majesty will be pleased to order that the off reckoning of two pence *per diem* from every private soldier, and from non-Commission officers proportionable, shall be stopped in the office of the Paymaster General to answer the debt, and continue to be paid by his Majesty for one twelve month in all events whatsoever. The Colonels are within three days to give security in 2,000*l.* at the Pay office to raise their regiments and clothe them, so as to be in a readiness to march within a month from the date of the raising order.

Sir Richard Haddock delivers an account of the squadrons intended for the Straits, Ireland and the Channel, and the day when they will be ready, viz^t:—

Straits Squadron.

2 March 1688.

3 Elizabeth	-	-	-	-	12 days
3 Plymouth	-	-	-	-	10 "
4 Advice	-	-	-	-	6 "
4 Assurance	-	-	-	-	8 "
4 Deptford	-	-	-	-	12 "
4 Foresight	-	-	-	-	6 "
4 Portland	-	-	-	-	6 "
4 Woolwich	-	-	-	-	12 "
5, 3 Fire Ships	-	-	-	-	8 "

Irish Squadron.

4 St. Albans	-	-	-	-	12 "
4 Bonaventure	-	-	-	-	8 "
4 Dover, now in the Downs.					
4 Jersey, on the coast of Ireland.					
4 Mordant, in the Downs.					
4 Swallow, on the coast of Ireland.					

Channel Squadron.

4 Antilope in the Downs.					
4 Greenwich	-	-	-	-	10 "
4 Ruby, in the Downs.					
5 Dartmouth	-	-	-	-	6 "
5 Garland	-	-	-	-	8 "

At the Committee at Hampton Court, the 3rd of March 1688-9.*

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All available ships of war to be sent at once to the Downs. Col. Cunningham's and Col. Richard's regiments to be sent at once to Londonderry, and Admiral Herbert to take care that transports be provided. The Admiralty to provide passage at Liverpool for 3,000 horse and dragoons; and the Committee to present his Majesty with the names of colonels that will undertake to raise the 14 regiments intended for Ireland.

At the Committee at Whitehall, 4 March 1688-9.

Present,

Same as above, with the addition of Marshal Schonberg.

Other Colonels agreed on for the 14 Irish regiments, viz^t D. Norfolk, Sir Henry Ingoldsby and Col. Earle. Others likewise proposed by M. Winchester viz^t:—E. Manchester, E. Kingston and L. Delamer.

At the Committee, 5 March 1688-9 in the morning.

Mr. Russell gives an account of what has been done in relation to the shipping, viz^t; that orders have been sent from the Navy Board to provide vessels to carry over 1,200 men immediately from Liverpool to Londonderry, and that the Admiralty have ordered shipping at Liverpool and Chester for carrying 3,000 horse and dragoons to Ireland.

Letter (written by order of Committee) to the Commissioners of the Customs asking what merchant ships there are at Chester, Liverpool and Whitehaven available as transports. Signed W.B.

At the Committee, 5 March 1688-9, in the afternoon.

The Committee desire the Commissioners of the Treasury to provide forthwith 5,000*l.* to be put on board Admiral Herbert's

* The names of those present at the various meetings, where recorded, are as follows :—

The King.—(At Hampton Court.) March 3 and 30.
L. President.—March 3 to 5, 8, 9, 21, 26, 30; April 5, 6, 8, 20, 24.
L. Privy Seal.—March 3 to 5, 7 to 9, 18, 21, 26, 30; April 2, 6, 17, 20, 23, 24, 27.
M. Winchester (D. Bolton).—March 3 to 5, 7, 9, 18; April 23.
L. Steward.—March 3 to 5, 8, 21, 26, 30; April 5, 6, 8, 24, 27.
E. Shrewsbury.—March 3 to 5, 7, 8, 21, 30; April 5, 6, 8, 17, 24, 27.
V. Fauconberg.—March 3 to 5, 7, 8, 21, 26, 30; April 2, 8, 17, 20, 23.
V. Mordaunt.—March 3 to 5, 8, 21.
L. Churchill (E. Marlborough).—March 3 to 5, 7, 30; April 8, 24.
Mr. Sydney.—March 3 to 5, 7, 8, 18, 21, 30; April 8.
Mr. Russell.—March 3 to 5, 7, 8, 21, 26, 30; April 2, 8.
Marshal Schonberg.—March 4, 7, 9, 18, 30; April 2, 5, 6, 8, 17, 23, 24.
E. Nottingham.—March 5, 7, 8, 18, 21, 30; April 2, 6, 8, 24.
Mr. Harbord.—March 5, 8, 9, 18, 21, 26, 30; April 2, 5, 20, 23.
Mr. Comptroller.—March 7; April 6.
Sir Hen. Capell.—March 9.
V. Lumley.—April 5, 8.

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fleet for necessary contingencies.—Several of the Colonels are called in, and accept the conditions read to them. They are told that as the King will give them leave to name their own officers, they are to carry the names of them to Marshal de Schonberg.—*Mr. Arnoll*, lately come from the North of Ireland, gives an account of the state of those parts, and is told that the King is preparing both by sea and land to assist the Protestants in Ireland with all the force he can get together.

At the Committee, 7 March 1688-9.

Letter (written by order) to Commissioners of Customs for an account of vessels at Chester and Liverpool.—*Mr. Cairnes*, who was sent from Londonderry to represent the state the town was in, is called in and ordered to go thither within three days and acquaint the town that succours are coming from England, and to return as soon as may be with intelligence, for which service 50*l.* is to be advanced him.—*E. Shrewsbury* is desired to move the King that a letter may be written for the Governor of Londonderry by *Mr. Cairnes*, to acquaint them that several regiments of foot and all other necessities are being sent to that place.—Inquiry is to be made whether *Mr. Harbord* has taken care for victualling the two regiments to be sent from Liverpool to Londonderry, and if not, the Commissioners for victualling the Navy are ordered to attend about it.—Upon reading a paper from the Judge Advocate, it is thought fit that a Deputy Judge Advocate be sent both to Holland and Ireland.—Upon reading the Petition of some disbanded Irish officers, their Lordships agree to recommend their case to the King.—Their Lordships agree on the form of an Oath to be taken by all officers and soldiers in the Army, which is to be proposed to his Majesty for his approbation, viz^{t.}, I swear to be true to our Sovereign Lord and Lady King William and Queen Mary, and to serve them honestly and faithfully in the defence of their Persons, Crown and Dignity against all their enemies and opposers whatsoever, and to observe and obey their Majesties' orders, and the orders of the generals and officers set over me by their Majesties. So help me God and the contents of this Book.

At the Committee, 8 March 1688-9.

Reply from the Commissioners of the Customs as to shipping at Chester etc. They are informed that to Whitehaven belong about 50 sail of ships from 50 to 200 tons burden, which generally use the coal trade to Ireland and, by reason of the present disturbances, may probably be now at home and unemployed. To the ports of Chester and Mostyn do not belong above 20 sail of shipping, and those generally of small burden from 25 to 60 tons, unless two or three of Mostyn of about 100 tons, which also use the coal trade. To the port of Liverpool belong 60 or 70 good ships from 50 to 200 tons burden, but, because they drive a universal foreign trade to the Plantations and elsewhere, the Commissioners can make no judgment what number of them

may be at home and in condition for the proposed service.
Signed Jo. Sansom. Custom House, London; 8 March 1688.

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Their Lordships will propose that Major-Gen. Kirke be ordered to visit immediately the regiments intended for Ireland.—E. Shrewsbury is desired to give notice to all persons, where any Irish Papists are detained, that they be continued in custody, with an allowance by the King of sixpence a day for their subsistence.—The Victuallers of the Navy attend and give an account that they have hired ships for 1,200 men at Chester, and give an estimate of provisions ordered to be got ready. Here follow (1) An Estimate of Provision for 1,200 men for 10 days, amounting to 341*l.*, allowing each man 1 lb. of biscuit, 1 lb. of cheese, and 1 gallon of beer *per diem*, and a further 240*l.* for freight of men and accoutrements at 4*s.* a head; and (2) A list of 7 ships proposed to take the men aboard.

Their Lordships order a letter to be written to Admiral Herbert that the ships hired at Chester and their convoy be directed to go to Liverpool.—And the Commissioners of the Navy are to provide for 300 men more, the two regiments being supposed to consist of 1,500 men effective.—Here follow the Directions to Admiral Herbert and the Victuallers.—Their Lordships finally agree on the list of Colonels to be proposed to his Majesty, viz^t :—

M. Winchester	-	-	-	2 regiments.
E. Devonshire	-	-	-	1 regiment.
E. Kingston	-	-	-	1 "
E. Roscommon	-	-	-	1 "
E. Drogheda	-	-	-	1 "
V. Castleton	-	-	-	1 "
V. Lisburne	-	-	-	1 "
L. Herbert	-	-	-	1 "
Sir Edward Dering	-	-	-	1 "
Sir Henry Ingoldsby	-	-	-	1 "
Sir Thos. Gower	-	-	-	1 "
Mr. Earle	-	-	-	1 "

At the Committee, 9 March 1688-9.

Letter ordered to be written to Adm. Herbert desiring an estimate from the Ordnance office of the stores of war necessary for his fleet, that their Lordships may give directions for the speedy despatch of the same, and desiring him to order Sir Richard Haddock to state how many of the ships in his recently delivered List are now in the Downs or ready to sail, or where they are at present, and in what readiness the whole fleet intended for Ireland is at this time.—Marshal Schonberg is desired to order the Commanders-in-Chief of the regiments intended for Londonderry to hasten thither with all speed.—Agreed to move his Majesty that 1,000*l.* may be lodged in Mr. Guy's hands, to be disposed of according to the orders of the Committee.—The Committee desire that Mr. Speaker and Sir Henry Capell would acquaint his Majesty at Hampton Court that the Committee desire his Majesty would appoint some members of the House of Commons to acquaint the House on Monday that, by reason of a late vote of that House, the Country will not obey any warrants for pressing carriages,

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carts, and horses for the marching of the forces towards Ireland, Scotland, etc., and to desire there may be some speedy remedy.—Letter written to Commissioners of Customs enquiring whether the ships, on which Capt. Hamilton was to go on board, were sailed from Chester, Liverpool, or Whitehaven.—Marshal Schonberg states that 5,000 arms and other stores of war, ordered to be carried from Exeter to Londonderry, are already put on board the Dutch ships, and that he will appoint a person to take charge of the arms on the delivery of them by the Dutch storekeeper. He is desired to direct Sir Henry Sheres to give an account from time to time what arms come into the Tower, in order to the sending arms and other stores to Chester for six battalions. *Memorandum*:—A memorial containing the several Directions concerning Arms is this day presented to the Marshal de Schonberg by Mr. Blathwayt, viz^t:—Memorial of all that has been directed concerning Arms. To be immediately sent to Liverpool and from thence to Londonderry from Exeter: 5,000 arms; 400 barrels of powder with ball and match proportionable; 500 hand-grenades. To be sent to the same place from the Tower: 6 gunners and 6 gunsmiths; 4 miners; an engineer and a storekeeper. That the arms and stores of war that shall afterwards remain at Exeter be carried to Bristol, as soon as Storekeepers and Storehouses shall be ready to receive them, which the Marshal de Schonberg is desired to give order in. Fire-arms, together with all other necessaries proportionable for six battalions (pikes excepted), to be immediately sent by land from the Tower to Chester, to remain in the stores there. The arms of Col. Strangway's late regiment to be sent from Blandford to Bristol.—E. Shrewsbury is desired to move his Majesty to order a General Officer to go immediately to Chester, Liverpool, and those parts where the forces are to embark for Ireland, to take care for their transportation, etc. His Lordship is further desired to give a passport to Mr. David Cairnes, appointed to go to Londonderry, with a certificate of his constant attendance at Court on behalf of that city, and to give him instructions to report on his arrival there what condition Londonderry shall then be in as to men, arms, and ammunition, and whether the country thereabouts can furnish provisions for a greater force intended to be sent thither, without carrying provisions from England, and that Mr. Cairnes acquaint the Governor of Londonderry of the great care his Majesty has taken for their security, and of the further preparations now making for the safety of Ireland.—*Memorandum*:—Sir John Lowther delivers a Paper giving an account of the stores shipped at Whitehaven with Capt. Hamilton for Londonderry, viz^t, March 6, shipped aboard the "Deliverance": 138 barrels and boxes of shot; 4 more ditto, broken barrels; 327 cases of pistols and 6 pairs of empty holsters; 100 barrels of powder; 239 match-locks; 378 ditto, broken, to be repaired; 150 fire-locks; 11 ditto, broken; 83 swords; 331 pikes; 20 drums; 10 pairs of drumsticks; 1 cask of bandeleers; a parcel of match, the weight not known.

Orders and Instructions for Colonel John Cuninghame, and upon his death or absence to Col. Solomon Richards or the Officer in Chief with the regiments whereof they are Colonels.

He is without delay to repair to the quarters of his regiment, and to take care that it be in a readiness to march to Liverpool. He is

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then to go to Liverpool, and as soon as the transports for his and Col. Richards' regiments are ready, together with the frigate for their convoy, to cause Col. Richards' regiment to go on board, and to order his own regiment to march to Liverpool, and embark with all speed. Of the 1,000 arms ordered to be carried to Liverpool, he is to deliver what are necessary to the said regiments, and carry the rest to Londonderry. He is to receive 2,000*l.* from Mr. Anderton, Collector of the Customs at Chester, for the subsistence of the regiments and repairing the defences of Londonderry. On arriving there, if the city is still in the hands of the Protestants, and he can land the troops with safety, he is to do so, and deliver the Instructions to Col. Lundy, the Governor, and assure him and the townsmen of further succour. Meanwhile, he is to do his best for the defence, and report from time to time on the condition of the town, and state whether Capt. James Hamilton has arrived there, and how he has disposed of his money and stores. If it is unsafe to land, he is not to expose his troops to any extraordinary hazard, but have them conveyed to Carrickfergus, or, if he cannot land there, to Strangford, and if landing there also is impossible, he is to bring them back to Liverpool. Given at Whitehall 12 March 1688-9.

By his Majesty's Command.

Instructions for Robert Lundy Esq. Governor of Londonderry.

He is to admit the two regiments of Colonels Cunningham and Solomon Richards, and give orders for their quartering etc. He is to make the best defence he can, and prevent the enemy from occupying any approaches to the city, and admit and enroll into companies such Protestants, able to bear arms, as he may confide in, but not more unuseful people, women and children than the place can maintain. He is to report from time to time, and maintain good relations with the two regiments and more especially with their Colonels, and continue the city in the King's obedience until the arrival of an army, now being sent from England, shall shortly restore peace in Ireland. Given at Whitehall 12 March 1688-9.

By his Majesty's Command.

Letter to Mr. Guy, directing an additional 2,000*l.* to be paid at Chester forthwith to Col. Cunningham or his deputy, making 4,000*l.* in all. *Dated* 12 March, 1688-9.

Additional Instructions for Col. Cunningham, or the Officer in Chief with the two regiments of foot under the command of himself and Col. S. Richards.

He is to receive the additional 2,000*l.* from the Collector at Chester, and on arriving at Londonderry, to pay 500*l.* to Rob. Lundy, the Governor, as part of a reward for his services, and apply the rest for defraying contingent charges. The departure of the regiments is not to be delayed, in case the money is not paid to Col. Cunningham at once. Given at Whitehall 14 March 1688-9.

By his Majesty's Command. Shrewsbury.

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Letter from the Committee to "My Lord and Gentlemen," [the Comm^{rs} of the Admiralty], desiring them to order the captain of the convoy and masters of the transports to follow Col. Cunningham's directions.

At the Committee. 18 March 1688-9.

L. Churchill acquaints the Committee that the King intends to send two more battalions immediately to Londonderry. Marshal de Schonberg is desired to see to their being armed. The Commissioners of the Admiralty are forthwith to attend and receive directions for providing ships and victuals for the two battalions at Liverpool, and to give an account of what ships are preparing to go out with Admiral Herbert and where each ship remains at present.

21 March 1688-9.

An order sent to the Admiralty concerning the ships to go out with Admiral Herbert, and to prepare shipping for the two last battalions, making up 1,500 men, with victuals for 12 days.

A List of the Names and rates of the Ships of War, out of which Admiral Herbert is to have his squadron for the present expedition, and in what station each ship remains at present.

The List gives the names of 4 third-rates, 14 fourth-rates, and 2 sixth-rates, in the Downs, ordered to Spithead; of 4 third-rates, 2 fourth-rates, and 1 fifth-rate at Spithead; of 4 third-rates at Sheerness and Chatham; of 2 third-rates at Portsmouth; of 3 bomb-vessels at Deptford, and of two yachts gone to Spithead—making a total of 38.

25 March 1688-9.

Letter from the Committee to "My Lord and Gentlemen" [the Comm^{rs} of the Admiralty], desiring to know how far the Order of Council of 27 Feb. last, delivered to Admiral Herbert, concerning the arras etc. to be sent from Exeter to Londonderry, has been executed, their Lordships esteeming all delays very prejudicial to his Majesty's service. The List of Ships intended for Adm. Herbert's squadron, with the account of having hired transports for the 1,500 men, has been received, but it contains no mention of victualling. *Signed W. B.*

An Express to be sent at once to Adm. Herbert at Spithead with an order concerning the 5,000 arms ordered to be sent to Liverpool.—*Memorandum*: The arms to be sent directly to Londonderry, without stopping at Liverpool.—Here follow (1) a Letter of date, to be delivered to Adm. Herbert, directing the 5,000 arms, 400 barrels of powder etc., and 500 hand-grenades, now on board the Dutch ships at Topsham, and directed to be carried to Ireland, to be sent as just mentioned, and (2) Instructions to Ralph Young, his Majesty's messenger, who was to deliver the letter and report.—Marshal de Schonberg is desired to appoint a storekeeper to take care of the arms at Londonderry.

At the Committee 26 March 1689.

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Letter from the Committee to the Lords Commissioners of the Treasury, desiring them to furnish 600*l.* to the Office of the Ordnance for the armourers and gunsmiths, to encourage them to proceed in making arms for his Majesty's service. *Signed* Danby, P. Halifax, C.P.S. Winchester, Devonshire, Fauconberg, H. Sydney.

Read: A Letter from Capt. Hamilton from Ramsay Bay, Isle of Man, 13 March 1688-9. Informs his Lordship that last Friday he left Whitehaven, and having made a shift to reach the Isle of Man, put his ship under the convoy of the "Jersey" frigate, Capt. Beverley; but was disappointed to find that the "Pelican," with the money, arms and ammunition he received at Chester, had not arrived, notwithstanding his orders to her owner and master, Mr. Nicholas Ward. Capt. Montgomery, who has been sent with letters from Ireland, to inform him of the deplorable condition of the country, desires him to hasten at once to their relief, the enemy's army, at least 10,000 strong, having come on the 11th to the Newry and burned Loughbrickland that night, and forced the Protestants to retire. Sir William Franklyn, the bearer of this letter, and Mr. Ormsby will give his Lordship more particulars. Ulster, he is assured, will be lost, unless ammunition is at once supplied, of which they are almost quite destitute, as well as arms, which they greatly need. He is resolved therefore, as soon as the wind will permit, to sail to Donoghedee, and, touching there for intelligence, to proceed as near Belfast as he can, and there deliver up part of his trust, if he finds they will be able to secure it from the enemy; and he will return to the Isle of Man, with the man-of-war, to convoy Mr. Ward on his voyage. Begs his Lordship's favourable construction of his proceedings and representation of them to the King. Nobody could be more zealous than himself in this cause. *Signed* James Hamilton.

28 March 1689.

Order in Council that Col. Lundy, Governor of Londonderry, be appointed also Governor of Culmore Castle.

Order in Council for the Lords Commissioners of the Treasury to supply Mr. Guy with 600*l.* for the Treasurer of the Ordnance, to make up the sum of 1,000*l.*, appointed for the contingent occasions relating to Ireland and to be disposed of for his Majesty's service by the Committee for the Affairs of Ireland.

Order in Council for Duke Frederick, Master General of the Ordnance, to give an account of all arms etc. in store, and procurable in a short time.

Read: A Letter to the Committee from the Commissioners of the Admiralty, stating that they are informed by the Navy Board that a vessel is hired at Plymouth for carrying arms etc. from Topsham to Londonderry, but that the storekeeper at Exeter refuses to deliver the arms, without an order, to the master of the vessel. *Signed* P. Bowles.—Order sent, thereupon, to Lieut. Col. Gypson for delivering up the arms, according to a list and order signed by Marshal de Schonberg, which follows, the list and order being in Dutch.

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At the Committee for the Affairs of Ireland at Hampton Court,
30 March 1689.

His Majesty (present) is pleased to declare his resolution to send the regiments following into Ireland, including the two already sent, and two others appointed to embark at Liverpool. A list follows of 6 regiments of horse (1,950 men); 2 of dragoons (840 men), and 26 of foot, each 780 strong, and including 3 regiments of French refugees. As the total, viz^t 23,070 men, exceeds the number of 22,330 for which Parliament has made provision for six months, his Majesty intends that one of the English regiments of foot shall be left in England, thus making the total for Ireland consist of 22,290.

His Majesty, further, taking notice that, by the conditions the Colonels of the 14 new regiments have entered into, those regiments are to be complete and clothed on the 12th, 14th and 16th of April next, declares his pleasure that all the forces intended for Ireland shall begin their march on or before the 1st of May next, and the new Colonels are to have notice to prepare accordingly. The forces are to embark at some of the ports lying between Chester and Carlisle, and Mr. Russell and Mr. Harbord are to make arrangements for that purpose with the Commissioners of the Admiralty.

Noted here in margin. These are true copies of the entries in the Journal of the Committee of the Privy Council for the affairs of Ireland in the month of March 1688-9, that were desired to be made by the Lords Committees of the House of Peers. William Blathwayt.

Whitehall, 1 April 1689.

Request to "our very good Lords" that, as 4,000*l.* have been ordered to be paid at Chester to Col. Cunningham by Mr. Anderton, and it is understood that only 2,000*l.* has been paid to him, the remaining 2,000*l.* may be forthwith paid at Chester or Liverpool to Sir John Hanmer or the officer in chief of his and Kirke's regiments, to answer occasions at Londonderry as before appointed. From the Council Chamber at Whitehall, 3 April 1689. *Signed* Halifax, C. P. S. Le Marshall de Schonberg, Nottingham, Fauconberg, Russell, W. Harbord.

Read: Instructions to Peirey Kirke, Esq., Major General of our Forces.

He is to make enquiries at Liverpool as to the readiness of the transports, and to expedite the embarkation, and, leaving Chester Castle in charge of some fit person till the arrival there of Sir John Edgeworth's regiment, to order Sir John Hanmer's regiment to march at once from Chester to Liverpool and there embark. Given &c. 3 April 1689. *Signed*. By his Majesty's Command. *Nottingham*.

Read: Instructions to Sir John Hanmer, and in his absence to the Officer in Chief of his and Major Gen. Kirke's regiments. He is to follow Major Gen. Kirke's directions as above, and to apply to Mr. Anderton for the 2,000*l.* intended at first for Col. Cunningham, of which he is to pay to Governor Lundy 500*l.* as part reward for his services, and the rest to defray contingent charges.

But the departure of the two regiments is not to be delayed if the money is not forthcoming. He is to make the best defence he can of Londonderry, and assure them there of further succour. If, on his arrival, he find the city taken, he is to join the two other regiments under Colonels Cunningham and Richards, and if that cannot be done, to return to Liverpool and report for further orders. Given at our Court etc. 3 April 1689. By his Majesty's Command. *Nottingham.*

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Letter to the Comm^{rs} of the Admiralty directing them, by command of the King, to order the Captain of the convoying frigate and the masters of the transports for Major-Gen. Kirke's and Sir John Hanmer's regiments, under orders to embark at Liverpool, to follow the directions of Sir John Hanmer or the officer in chief. *Signed Nottingham.*

2 April 1689.

That his Majesty be moved in Council to order provisions to be sent forthwith to Londonderry for the garrison.—And whereas his Majesty has ordered the several officers lately come out of Ireland, who are not yet provided with employment, to march to Liverpool, there to embark for Londonderry, That an advertisement may be put in the Gazette that such officers as are not yet employed in his Majesty's service, may bring in their names to the Commissary General of the Musters, who will acquaint them with his Majesty's orders for the disposing of them.—His Majesty is likewise to be moved that the Military Oath and Test administered in England may be sent to Londonderry to be taken by all employed there in his Majesty's service.

At the Committee, 5 April 1689.

Letter from the Committee to the Admiralty enquiring whether the transports for the two regiments are ready at Liverpool, and whether any ships with a convoy are appointed to carry the Irish soldiers from the Isle of Wight to Hamburgh, and where they are at present. *Signed R. C.*

That his Majesty be moved to name which battalion he will have left behind in England.

At the Committee, 6 April 1689.

Letter to E. Nottingham. The Navy Board has advised that the transports will be ready at Liverpool by the 10th inst. There are but two convoy ships on that station, one of which was sent on 10 Feb. to Londonderry with arms &c., and the other was ordered to convoy ships with some former forces thither; but orders were given on 30 March, in case of their return, for the convoying a second 1,500 men to that place, which they take

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to be Kirke's and Sir J. Hanmer's regiments. *Signed* Carbery, Thos. Lee, John Lowther, Wm. Sacheverell. *Dated* Channel Row, 5 April 1689.

Letter to the Committee. The Commanders of the two frigates at Liverpool have been ordered to convoy the regiments. Directions have been given to the Navy Board to provide ships with all speed for carrying the 1,800 Irish soldiers from the Isle of Wight to Hamburg, but no account has yet been received of ships being ready to receive them. *Dated* Channel Row, 5 April 1689. *Signed* as in preceding.

Memorandum: To move his Majesty that all the troops should be drawn out by their officers, and to propose to them whether they would go to Holland, and such as refused to go thither to be disbanded. This is thought to be the best trial and test which can be made. But to be done at the same time in all those troops and regiments that are designed to be so tried.

At the Council Chamber in Whitehall, 4 April 1689.

Memorandum: Orders of Council issued, vizt:—

(1.) Desiring the Commissioners of the Treasury to order Mr. Anderton to lay out 1,000*l.* in such provisions as the Right Hon. W. Harbord shall direct, and to have the same sent from Liverpool to Londonderry with all speed.

(2.) Ordering Mr. Harbord to direct Mr. Anderton to buy provisions accordingly.

(3.) Desiring the Commissioners of the Treasury to take care that Kirke's and Hanmer's regiments be forthwith satisfied their off reckonings to 1 March last.

At the Committee, 8 April 1689.

The L. President is desired to acquaint his Majesty that the Committee of Ireland have despatched everything relating to the two last regiments that lies in their power or direction, so that those regiments may set sail with the first wind.

Ordered this day in Council that the Committee should consider of a Proclamation to be issued for the better and more punctual payment of soldiers by their officers, and for a Commission to receive the complaints of soldiers wanting their pay.

At the Committee, 17 April 1689.

Mr. Harbord is desired to have the provisions sent to Londonderry forthwith, without waiting for a convoy. *Signed* R. C.
—To consider of money for Londonderry—An intelligent man to be sent thither.

At the Committee, 20 April 1689.

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Ordered that the Commissioners of the Treasury be desired to pay to Mr. Harbord 12,000*l.*, for him to send to Londonderry for his Majesty's servicé.

Ordered that the Commissioners of the Admiralty cause three vessels of the bigness of fifth-rate frigates to be hired and sent to Liverpool.—Letter signifying his Majesty's pleasure that this order be superseded. *Signed* W. B.

At the Committee, 23 April 1689.

Mr. Harbord reports that his Majesty approves of sending Kirke as Commander-in-Chief at Londonderry, and that Col. Trelawny be sent into the north in his place; and that the two frigates at Chester, with some other vessels, be sent to attend the service of Londonderry.

At the Committee, 24 April 1689.

Ordered to desire the Duke of Schonberg, Master General of the Ordnance, to appoint an officer to inform the Committee as to the present state of the arms in England, and what regiments are armed, etc.

Ordered to desire Mr. Harbord to cause the levy money to be paid to the Duke of Bolton for the foot regiment lately raised by him for Ireland.

Ordered that Mr. Jephson, Secretary to the Commissioners of the Treasury, pay 130*l.* to Mr. Baldwin Leighton in satisfaction of money disbursed by him in Ireland for his Majesty's service, the same to be paid out of the 1,000*l.* lodged in the hands of Mr. Guy, for disposal by the Committee.

This day their Lordships received advice from Liverpool of the return of Colonels Cunningham and Richards from Londonderry.

At the Committee, 25 April 1689.

Whereas information has been given to the Board of the danger Londonderry is in at present, which may render it unsafe for the 5,000 arms and ammunition, intended for that place, to be now sent thither, the Committee desire E. Nottingham to send a messenger to Torbay to stop the ships with arms and convoy, if still there; or, if gone, to send him on to Plymouth, with a despatch to Admiral Herbert, directing him, in case the ships with arms be sailed beyond Land's End, to prevent their going to Londonderry and to send them to Chester. If the ships are not at Plymouth, the messenger is to go to Falmouth, to stop them, if there. Should the ships and convoy be met with beyond the Land's End, before they join Adm. Herbert's fleet, they are

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to go to Chester, and the arms to be there unladen; but, if met with this side of the Land's End, they are to stop in the next safe port, until further orders. The said two ships with the 5,000 arms, &c. for Londonderry, lying on the 13th inst. at Torbay, are to remain there, or in the next place of safety if not gone beyond Land's End, until further orders, unless Adm. Herbert requires the arms. From the Council Chamber in Whitehall, 25 April 1689.

At the Committee, 27 April 1689.

Letter received from Admiralty stating that the Monmouth yacht has been ordered from Chester ever since the 10th inst., being not fit to stay longer there, so that it is apprehended she cannot answer the service desired by their Lordships. But the Swallow, lately returned from Londonderry, is now at Chester. Dated Channel Row, 27 April 1689. Signed Phineas Bowles.

Subscribed: These are true copies of the entries in the Journal of the Committee of the Privy Council for the affairs of Ireland in the month of April, 1689, that were desired to be made by the Lords Committees of the House of Peers. *Rich. Colinge.*

(d³.) A Relation of the present condition of the North of Ireland. The number of the Protestants in the North of Ireland were esteemed not much less than 100,000 men, some whereof have left the kingdom, others have taken protections; but generally ill-armed, want ammunition, and have no money; so that they who are forced from their habitations are in a very necessitous condition, and are thronged into a small corner of the country near Londonderry, where (without the walls) there is little safety, and within the room for above 3,000 men at most, and are become a burden to the inhabitants of that part of the country. There are three other little places, which, when I came away, were in Protestants' hands, viz^t, Coleraine, Sligo, and Inniskillen, but were judged not tenable, and that they would retreat towards Derry in few days. The Irish army had been four days before Coleraine, when I came away, under the command of Lieut.-Gen. Hamilton. The place is of no strength more than a rampart newly made affords it, but has the conveniency of a great river, and a bridge to retreat over, when they can defend it no longer. If they are not prevented by another army on Derry side of the water, their retreat will be easy. Where the Irish army goes, they invite the country to take their protections, which many of the people in the counties of Down and Antrim have done, most of their chief gentlemen and officers having left them and come into England, Scotland, and the Isle of Man. It is likewise to be feared in a short time many more will take their protections, if not soon encouraged by a very considerable supply of men, arms and money, the last whereof is so wanting, that those gentlemen that have raised men cannot keep them together for want of subsistence, nor get intelligence of the enemies' motions, strength, or designs. Neither have any of the gentlemen of the counties of Londonderry, Donegal, Tyrone, or Fermanagh received Commissions,

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which are the only counties in the Kingdom not overrun by the Irish, and that now bear arms for their Majesties and Protestant religion, except some few that are retired there, under the command of Lord Blayney, Sir Arthur Rawdon, Col. Francis Hamilton, Sir Nicholas Atchison and Lieut. Col. Richard Johnston. Londonderry, we are in hopes, may hold out some time, the Governor, Colonel Lundy, being very much esteemed, not only for his forwardness in their Majesties' service, but for his military knowledge and courage, and his extraordinary care and vigilance. But there is a present want of money and engineers to repair and better fortify the fort of Culmore, which is of very great importance to that city, lying so upon the river that it obstructs the passage of shipping, which I doubt by this is the only way of relief they can expect. It will be very necessary to have a yacht or some other small ship of force to attend that place and convey other vessels back and forward, the Irish having set out from Carrickfergus some small vessels to intercept Protestants in their passage to Scotland and Ireland. It is believed Tyrconnel has in arms near 70,000 men, horse and foot, the Protestants' arms and horses, which he has lately taken, helping to make up that number. *Endorsed: Copy. Present Condition of the North of Ireland, given in 10 April 1689: read at the Committee the same day. [In same handwriting as preceding.]*

(d⁴.) *Undated.*—Paper entitled "List of the names of the Lords of the Committee for the Affairs of Ireland at their several meetings, desired to be made by the Lords' Committees of the House of Peers." Begins with an Order in Council of 14 Feb. 1688-9, appointing the Lord President, the Lord Privy Seal, the Lord Steward, E. Shrewsbury, V. Fauconberg, V. Mordaunt, L. Churchill, together with Marshal Schonberg and Mr. Harbord, a Committee for the affairs of Ireland. The dates of the meetings are Feb. 15, 17, 18, 20, 21, 22, 25, 27; March 1, 2, 3, 4, 5, 7, 8, 9, 12, 14, 15, 18, 21, 22, 25, 26, 27, 30; April 2, 5, 6, 8, 10, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28. Two of these meetings, viz^t, on March 3 and 30, were at Hampton Court, when the King was present; the rest were at Whitehall.

The attendance of the above-named members of the Committee is as follows:—

- L. President (E. Danby).—Every meeting but Feb. 17 to 27, March 7 and 14 to 18; April 2, 17, 18, 23 and 27.
- L. Privy Seal (M. Halifax).—Every meeting but April 5, 8, 19, 25 and 28.
- L. Steward (E. Devonshire).—Every meeting but Feb. 21, March 1, 7, 9, 15 and 18; April 2, 10 to 20 and 23.
- E. Shrewsbury.—Every meeting but Feb. 22, March 9, 18 and 26; April 2, 18 to 20, 23 and 28.
- V. Fauconberg.—Every meeting but Feb. 25, March 9, 18, 22 and 25; April 5, 6, 18 and 24 to 28.
- V. Mordaunt.—Meetings on Feb. 15 to 21 and 27; March 1, 3 to 5, 8, 14 and 21; April 10.
- L. Churchill (E. Marlborough).—Meetings on Feb. 15, 20 and 21; March 1 to 7, 25 and 30; April 8 to 18, and 20 to 24.
- Marshal Schonberg.—Every meeting but Feb. 22 and 25; March 3, 8, 21 and 22; April 20 and 27.

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Mr. Harbord.—Meetings on March 7 to 9, 18, 21 and 25 to 30 ; April 2, 5, 18, 19, 23 and 25.

Besides the members named above, the following appear as present on the following dates :—

M. Winchester (D. Bolton).—Feb. 22, 27 ; March 1 to 7, 9 and 18 ; April 20 and 24.

E. Bath.—Feb. 22.

Sir Hen. Capell.—Feb. 22 and March 9.

Mr. Boscawen.—Feb. 22.

Mr. Sydney.—March 3 to 8, 18, 21, 26 and 30 ; April 10 and 17.

Mr. Russell.—March 3 to 8, 21 and 30 ; April 2, 10, 17 and 19.

E. Nottingham.—March 5 to 8, 14, 18 to 25, and 30 ; April 2, 6 to 10, 19, 22, 24, 25, and 28.

Mr. Comptroller.—March 7 and April 6.

Admiral Herbert.—March 12 and 15.

V. Lumley.—April 5 and 8.

(*d*⁵.) 26 July. Copy Minutes of the Committee of Council on Ireland of March 1, 7, 16, and 30, 1689, vizt. :—March 1. The Committee agree to consider the conditions for raising 10,000 men for Ireland, as directed by the King. March 7. Form of oath to be taken by all officers and soldiers in the army, viz. : I swear to be true to our Sovereign Lord and Lady King William and Queen Mary, and to serve them honestly and faithfully in the defence of their persons, crown and dignity against all their enemies and opposers whatsoever, and to observe and obey their Majesties' Orders and the Orders of the Generals and officers set over me by their Majesties. So help me God. Mr. Blathwayt says 12,000*l.* were ordered to Chester for Londonderry, of which 4,000*l.* are now in the hands of the Colonels, 7,000*l.* laid out of it in shipping, 5,000*l.* in Kirke's hands; now this was over and above the constant pay to the army; and Hamilton 1,000*l.* March 16. That whereas Major Prower is said to be at Chester without any restraint upon his person, his Majesty would please to order the officer in chief of Sir John Hammer's regiment to take care he be kept in safe custody. March 30. *Mem.* To see whether his Majesty's Order in Council was countermanded, and to be enquired after at the Admiralty. *Endorsed*, Council Chamber, 26 July 1689.

(*d*⁶.) 31 July. Copy Minutes of Committee of Council on Ireland as follows :—March 8. Read : Letter from Bristol of 4 March ; Letter from Minehead of 3 March (*d*⁷) ; Letter from Minehead of 4 March (*d*⁸). March 25. Sir W. Francklin came from Belfast the 13th instant. There are 13,000 or 14,000 horse and foot listed in Antrim and Down, and more in other places of the North. They want arms, money, and ammunition, which he desires may be sent forthwith, and his Majesty moved to that purpose, and that three or four regiments might be sent to Belfast. Sir William Francklin was sent by those Protestants to desire these supplies of his Majesty, upon apprehension of Tyrconnel's marching against them. Sir William is acquainted that his Majesty is doing all that is possible for the relief of those Protestants. *Noted* in margin, 31 July, Council Minutes. *Endorsed*, Council Chamber 31 July 1689.

(*d*⁷.) Letter from Mr. W. Howell to Sir Robert Southwell Knt. in London. Sends some particulars of the state of the Protes-

tants in Ireland. After being despoiled for two months, they applied to Lieut.-Gen. Maccarty for protection, which was seemingly allowed them; but a few days after a proclamation was issued by the Lord Deputy Tyrconnel, commanding them to disperse. The refugees then fled to Cork, Bandon, Youghall and other Irish garrisons; but on 25 February last troops were brought into Cork and disarmed all the Protestants and seized their horses. Maccarty then gave out that King James had arrived at Kinsale, and that the army was going to attend him; but, being ready, he marched to Castle Martyr, where Capt. Boyle was induced to surrender, and he was taken prisoner and his house plundered. The townsmen of Bandon, hearing that E. Clancarty was coming with six companies of foot to disarm them, shut their gates, and by this time it is besieged by Maccarty, who swore he would kill every woman and child there, and, when they had done in Ireland, would march to England through Scotland, where they were sure of 40,000 malcontents. The writer has with difficulty escaped from Cork, with Mr. Bear, who will deliver this letter. The whole Irish nation is up against them; none being suffered to be neuter. Bandon is so full of English families, that a garret was at a dear rent. *Dated*, Minehead, 3 March 1688-9. *Endorsed*, From Mr. Howell; received 7 at night by Mr. Bear. *Mem.*: Both of them left Cork Harbour the 28th Feb.

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- (d⁸.) Letter from Edward, Bishop of Cloyne, to Henry [Compton] Bishop of London, in Crown Court, in Westminster, as follows:—
“ May it please your Lordship, Being necessitated to remove my family out of Ireland, I thought it my duty, as soon as I got (by God’s blessing) on English ground, to give an account of myself and that part of the country I left last Saturday night to the Government, under which I expect protection; and being my Lord D. of Ormond (the patronage of whose family I must ever acknowledge) is not, as I hear, at Court, I do presume to make my application to your Lordship, as being the Bishop of Cloyne in the County of Cork and Province of Munster in Ireland. Be pleased therefore to know that there was an association made by the Nobility and Gentry of Munster for their mutual defence and preservation, but so public that the Irish immediately knew of it, and Lieut.-Gen^l. Maccarty accordingly drew down forces out of a neighbouring province to break the Protestant measures. Some of these troops and companies were quartered at Youghall, where I live (as being the principal town in my diocese), where they behaved themselves with much insolence, demanding quarters on private houses, and breaking down all doors that seemed shut against them. On 26 Feb. last they were commanded to Castle Martyr (the late Earl of Orrery’s house, and now enjoyed by his son, Capt. H. Boyle), where the Lieut.-Gen. met them with several troops and companies. There it was reported that Capt. Boyle, who had above 100 gentlemen and servants about him, and knew of their coming too, would have defended his house, but upon the third summons he surrendered it, and he, his house and all the gentlemen were rifled and many excellent horses and arms secured by the Papists. I shall not reflect on Capt. Boyle’s conduct, nor (what he alleges) the Earls of Barrymore and Inchiquin’s breach of promise in not coming to his assistance at the hour appointed (for I am assured that both the Earls met the

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Lieut.-General some hours after upon his return, and parted good friends). But I cannot forbear to observe that the dependence of the young gentlemen and flower of this Province on these noblemen, particularly on Capt. Boyle, has proved fatal to them and their families; for, had they not been encouraged with great expectations from Castle Martyr, they had in time withdrawn themselves and their fortunes into England, and so waited better opportunities of serving their country; whereas now they are exposed to unavoidable ruin, for the several Parties that were coming in to the assistance of these Generals and were to be united on this provocation, are now dispersed and put to shift for themselves. This proving so easy a victory, and yet looked upon as the most difficult attempt the Irish had to make, has raised the fury of people and made them insufferable; so that they have disarmed all the Protestants in our town, and would not spare my house, but called for those arms we had watched with these four months past for fear of a massacre, took away my coach-horses, or rather kept them in my own stable at their command and for their service only. Nor can it be expected that their new levies, which are above 70,000, who never received a penny pay and whose Captains generally are men of no fortunes or very desperate ones, can be obliged longer without the remaining plunder of our towns, as they do enjoy all that can be taken in the country. Nay, the Recorder of Youghall came to me, as I was sending my family to the water-side, and declared I did well in transporting them away, for that their civil power signified nothing; that their jail was full of rogues (i.e. their new levies), and that they were in a most deplorable condition; and, though I knew this before, yet the testimony of the Recorder and a Papist added weight to the consideration. All the arts now left to keep up their forces without money is the coming of King James, who the Governor told me positively was landed last Thursday, upon which there were bonfires and great joy; but their hopes have failed yet that way. However, he is to land, and then they are all to march to England through Scotland. But till these things happen, they are like to want pay, and next year must want bread, since they have turned all their ploughshares into swords. Thus no less than fear of famine and massacre have prevailed with me to lay hold on the first opportunity that offered for preserving myself and my family, which must serve as my apology for withdrawing for the present out of apparent danger. My head is giddy, coming out of a storm at sea (as well as that at land), and therefore I must beg your Lordship's favourable interpretation of this profession of duty to the Government, and the honour I have for your Lordship, who am with all respect and reality &c. P.S.—If your Secretary pleases to give me notice that this came safe to your hands, I shall write once more from this place, before I remove into the country. Dated Minehead, 4 March 1688-9.

- (e.) 29 July. Draft order for attendance of certain witnesses before the Lords' Committee on Miscarriages in Ireland. L. J., XIV. 298. *In extenso*. Endorsed "Summons for the Bishops, Lords, Knights, and Gentlemen of Ireland to attend the Lords' Committee," and noted "Sir Oliver St. George in the New Buildings behind Barkeley House. W^m Westcombe knows most English there."

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(f.) 7 August. Capt. Shaw's Proposals for subduing those in rebellion in Ireland. The Irish have from time to time been in rebellion ever since the conquest of that kingdom, and though they are a flattering people yet they can never be won by kindness, as sad experience has shown. But the case of their being now in arms is different from all others, for other rebellions were against the government and governors sent from England; but now the King has been infatuated enough to make an Irish Papist Governor, and has caused to be disbanded and turned out of the army all the English Protestants, who were an excellent army, and has made up the new army with Papists, the sons of former rebels, and officered by Irish Papists from beyond the seas. The Civil Magistrates have been similarly changed, excepting only those whom the Government could not do without, so that Protestants have had no hopes of justice, and the choice of the now Governor shows a design to ruin the English interest. The Papists now in arms must be speedily subdued, and that before the next harvest, or the whole kingdom will suffer. This must be done by conquest rather than by compact, for the Papists have lived too long by rapine and spoil to return to labour until forced to do so. To this end it is proposed that seven or eight nimble frigates be sent at once to lie off the Irish coast towards Munster, so as to encourage the English to secure themselves until the arrival of an army. Meanwhile some good ships of war, with 8,000 or 9,000 arms, should be sent to Chester or Liverpool, to carry some 2,500 men and experienced officers to Ulster, and with them Commissions should be sent to fit persons. Some money should also be sent; and the officers should be acquainted with Ireland, with experience in dealing with former rebels there; and their commander must be warned to beware of treachery, and he must have a diligent Commissary of the Stores, as the Irish are sure to lay the country waste, and provisions fell sadly short in reducing the last rebellion. The army should have a knowing person to get intelligence, and where any garrison of the Irish stand out, that no favour be showed when taken, for a terror to the rest. Ulster, it is hoped, will be able to provide for the army; but a small force should be sent at once to enable this to be done. The writer offers to go as Adjutant. A note states that the substance of these proposals was delivered by the writer to Lord Coote in December last, to be communicated to those in power, and that Lord Coote told the writer in February that he had spoken with some in power about it, but that things proposed of that nature would not take, in regard it was thought Ireland would submit without force, or words to that effect. Dated 31 Dec. [Delivered in to the Committee by Capt. Shaw this day, and read on the 8th. Com. Book of dates.]

(g.) 8 August. A Brief Proposal most humbly offered to consideration by one that for many years served an officer, and was employed in the late war for reducing the kingdom of Ireland. The writer's Proposals of last December have been disregarded, in the view that the Irish would submit without force. They have now a strong and numerous army, well disciplined. They have grown confident by the assistance of the French King and the presence of James II., and will probably give battle. They are a false and perfidious people, and have causeless hatred of the English Government. The army to be

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sent to Ireland should be well provisioned, and be well supplied with surgeons and appliances. It is to be hoped that Londonderry may hold out, and if so, a small force will suffice to effect a diversion in that quarter, while the main body operates in Munster or Leinster, where some English are still left. The Great Island near Cork is worthy consideration, as a place to land and encamp. Officers who served in former wars in Ireland should be employed, and natives, who know best how to get intelligence of Irish designs and make use of the divisions among them. Promotion should go by merit, not by favour or purchase. A note adds that the writer on 10 June delivered the substance of these proposals to Col. Russell to be communicated to Count Schomberg; and that the like paper was given to Mr. Chetwyn, a member, who promised to deliver it to Mr. Harbord, and said he had done so. *Endorsed* June 10th *Proposals for Ireland.* Mr. Shaw's paper. Received this day. [Capt. Shaw was examined this day. Com. Book.]

(h.) 8 Aug. Paper offered to the Prince of Orange the 9th of January 1688-9 by the lords and gentlemen of Ireland, as follows:—"May it please your Highness, We the Lords and Gentlemen of Ireland, whose names are hereunto subscribed, having this day assembled and met together, do render to your Highness our most humble and hearty thanks for the assurances you have been pleased to give us, that you will endeavour to put that kingdom into such a condition that the Protestant religion and the English interest may be maintained and preserved there; and since in order thereunto your Highness hath commanded our advice, we do humbly offer that your Highness will please to send *forthwith* your summons to the Earl of Tyreconnell to surrender the sword and government of that Kingdom to such as your Highness shall appoint to receive the same. That your Highness will at the same time command all Papists to lay down their employments, civil and military; and to surrender and give up their arms to such persons and at such places as shall be directed by your Highness. That your Highness will please to promise and declare that all Papists, as well Ecclesiastics as others, who shall speedily and quietly obey your aforesaid directions, shall be indemnified for all things they have done or acted, by virtue or colour of any authority or pretended authority, since the 6th of February 1684 (excepting murders and saving the rights of particular persons); that they shall also quietly enjoy such their estates as they are rightfully and lawfully entitled to, and be connived at in the private exercise of their religion by secular priests only; but that such of them who shall not comply within a time limited, shall be treated as rebels and traitors, and proceeded against accordingly with the utmost severity. That your Highness will be pleased to put, as soon as may be, the civil and military Government of that kingdom, as also the corporations and militia thereof, into the hands of Protestants, and to take a particular care of those who, since the 6th of February 1684, have lost their employments for being Protestants. And lastly we are humble suitors to your Highness, That you will be pleased to send over thither with all possible speed such a number of forces, arms, and ammunition as may be sufficient, with the blessing of God, to reduce the obstinate, and secure the future peace of that kingdom. All

which is humbly submitted to your Highness's wisdom, this 9th day of January 1688-9." [Delivered in to the Committee by Sir Oliver St. George this day. Com. Book 8 Aug.]

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(i.) 9 Aug. Mr. Pepys' Report to the Committee on Mis-carriages of Ireland, on the enquiries directed by their order of the 6th inst. 1. As to that which relates to the direction by which the Fleet under the command of L. Dartmouth was laid up, Mr. Pepys does not remember the said Fleet, or any part of it, to have been laid up, or that any one ship's company of the same was paid off and discharged within the whole time assigned in the said order. 2. As for the orders issued by him relating to the service of Ireland, they were (to the best of his remembrance) two, and no more:—one to L. Dartmouth about the end of December, for his sending two small frigates into St. George's Channel, for the executing such orders as they should find lodged for them at Chester, which was accordingly done by the "Jersey" and "Swallow." The other, to the principal officers and Commissioners of the Navy, about the middle of January, for their fitting and victualling three squadrons of ships, specially chosen out of the said Fleet, for the services following, viz^t, the Straits, the Channel, and Ireland, the residue being to be brought into port, there to be kept manned, (with their lowest complements of men) in victuals and full sea-pay, ready for future service. A List of which ships (according to this distribution) he annexes, out of his loose papers, referring their Lordships for further information to the original Books and Papers of his office, now resting with the Commissioners of the Admiralty. 3. As for the state of the Navy at the time of his ceasing to act (which was on the 20th of February), he takes leave humbly to observe that he left the same under the sole direction of Admiral Herbert (now Lord Torrington), to whom and the rest of the Commissioners, whom his Majesty has since been pleased to join with him, Mr. Pepys refers their Lordships for all notices touching the proceedings of the said squadrons, and every other matter relating to the Navy, from the 20th of February; upon which day, what the state was of every ship and vessel of his Majesty's then in sea-pay (whether at home or abroad) their Lordships will find in a List specially calculated and hereto annexed. *Signed* S. Pepys. Here follow the Lists above referred to, viz^t.: Jan. 12, 1688. Ships assigned out of the Fleet now under the command of L. Dartmouth, for the three intended Squadrons for the Straits, the Channel, and Ireland. Here follow the names of 4 third-rates, 8 fourth-rates, and 3 fire-ships for the Straits; 1 third-rate and 5 fourth-rates for the Channel; and 6 fourth-rates and 2 sixth-rates for Ireland. Their names are marked respectively (S), (C) and (I) in the last List below.

The Ships of the said Fleet, which (as not being appointed to any of the fore-mentioned Squadrons) were designed to be brought into Port, there to be kept manned (with their lowest complements of men) in victuals and full sea-pay, ready for future service. The ships are those marked R (Reserve) in the next List.

The State of every Ship and Vessel of his Majesty's (whether at home or abroad, of L. Dartmouth's Fleet, or under any other's

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command) being in Sea-pay upon 20 Feb. 1888-9, the day of Mr. Pepys's ceasing to act as Secretary of the Admiralty, viz:—

Rate.	Ships.	Place.	Rate.	Ships.	Place.
3rd.	R. Cambridge	Chatham.	5th.	Dragon	Straits.
	C. Defiance	Spithead.		S. Foresight	} Sheerness.
	R. Dreadnought	} On their way from the Downs to Portsmouth.		C. Greenwich	
	R. Edgar			I. Jersey	Chester.
	S. Elizabeth	Sheerness.		Leopard Hulk	Straits.
	R. Hampton Court.	} Chatham.		I. Mordaunt	Downs.
	R. Henrietta			R. Newcastle	Woolwich.
	R. Kent			Nonsuch	Portsmouth.
	R. Mary	Portsmouth.		S. Portland	Nore.
	R. Pendennis	Chatham.		C. Phoenix	Cruising between Harwich and Holland.
	S. Plymouth	Sheerness.		R. Portsmouth	Spithead.
	R. Resolution	} Chatham.		C. Ruby	Cruising between Dover and Calais.
	S. Warspight			I. Swallow	Chester.
	S. York	} Sheerness.		C Tiger	Portsmouth.
	I. Advice			R. Tiger Prize	Deptford.
4th.	Assistance	Jamaica.	S. Woolwich	Nore.	
	S. Assurance	Hope.	Dartmouth	Fitting at Chatham.	
	S. Albans, St.	Nore.	Guardland	Fitting at Sheerness.	
	C. Antelope	Downs.	Guernsey	Cruising off Harwich, &c.	
	R. Bristol	Portsmouth.	Mermaid	Deptford.	
	I. Bonadventure	} Chatham.	Pearl	Fitting at Portsmouth.	
	R. Centurion		Richmond	Portsmouth.	
	R. Constant Warwick.	Cruising off Guernsey.	Rose	New England.	
	R. Crown	Woolwich.	Sapphire	Straits.	
	S. David, St.	} Nore.	Swan	Fitting at Deptford.	
	S. Deptford				
	S. Diamond	Sheerness.			
I. Dover	Plymouth.				

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Rate.	Ships.	Place.	Rate.	Ships.	Place.
6th.	Deptford Ketch.	Virginia.		R. Paul, St.	Sheerness. Fitting for the Straits.
	Drake -	Jamaica.		R. Richard and John.	Deptford.
	Dunbarton -	Virginia.		R. Roebuck -	Portsmouth.
	R. Fire Drake -	Deptford.		R. Rose Sally Prize.	Deptford.
	Kingfisher Ketch.	Attending Jersey.		R. Sampson -	Guard at Sheerness.
	I. Lark -	Cruising off Harwich.		R. Sophia -	Deptford.
	R. Quaker Ketch	Deptford.		R. Speedwell -	Portsmouth.
	I. Saudadoes -	Cruising off Harwich.		R. Supply -	} Deptford.
Fire-ships.	R. Cadiz Merchant.	Deptford. Fitting for the Straits.		R. Thomas and Elizabeth.	
	R. Cygnet -	} Deptford.		R. Unity -	Portsmouth.
	R. Charles -			Young Spragg.	Portsmouth (Guard).
	R. Charles and Henry.		Yachts	Cleveland -	} Deptford.
	Eagle -	Guard at Sheerness.		Katherine -	
				Kitchin -	
	R. Elizabeth and Sarah.	Sheerness.		Merlin -	Guard at Portsmouth.
	R. Half-Moon -	Portsmouth. Fitting for the Straits.		Monmouth -	Ireland.
	R. Owner's Love	Deptford.		Navy -	Attending Guernsey.

[Delivered in to the Committee by Mr. Pepys this day. Com.
Book 9 Aug.]

(k.) 9 Aug. Copies of Orders which came to the hands of the principal Officers and Commissioners of the Navy in relation to the service of Ireland before the 1st of May last, vizt:— (1.) March 2. From L. Torrington. Recommends that vessels be immediately hired at Liverpool for transporting two battalions, consisting of 1,200 men, from there to Londonderry, to be victualled at the place of embarking. At Topsham or thereabouts a fitting vessel is to be hired for transporting to Londonderry 5,000 arms, 400 barrels of powder, with match and ball, and 500 hand-grenades. (2.) March 10. From Commissioners of the Admiralty. They understand through Adm. Herbert that shipping has been provided at West Chester for 1,200 men. The transports so provided are to be sent at once to Liverpool, to

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receive the regiments now there ready to embark, there being also a frigate ordered for their convoy. Proper boats must be provided for carrying the men on board. (3.) March 12. From Same. Require a list of the ships hired at Chester. (4.) March 21. From Same. In obedience to the Order in Council of date, they direct ships to be hired at once sufficient for carrying 1,500 men to Londonderry, furnished with twelve days' provisions. More than ordinary dispatch is requisite, and the orders must be sent by express. (5.) March 28. From Same. In answer to letter acquainting them with the extravagant demands made by the Masters of the Ships at Liverpool for transporting the 1,500 troops, the Commissioners desire that the best agreement be made that can, and all possible expedition used. (6.) April 16. From Same. As Major-General Kirke expects there should be shipping for 1,800 men, instead of 1,500, provision must be made at once for transporting the additional 300. (7.) April 16. From Same. In pursuance of the King's commands, shipping is to be hired forthwith at Liverpool for transporting the officers' horses, as mentioned in Mr. Anderton's letter. A note at the end adds that, pursuant to the above orders, directions were given by the Board to their correspondents at the several ports for transporting the forces and ammunition to Ireland, and that, by intelligence received, provision was made accordingly. *Dated* Navy Office, 8 Aug. 1689. *Signed*: R. Haddock,—Cobbett, John Berry. [Ordered by the Committee on 6 Aug., and delivered in this day. Com. Book.]

- (L.) 9 August. Abstract of the several orders, in relation to the service of Ireland, issued by the Commissioners of the Admiralty from the beginning of their Commission to the 1st May last.—March 10. To Navy Board to provide ships, etc. for transporting 1,200 men from Liverpool to Londonderry. March 12. To same to send list of ships hired at Chester. March 13. To H.M.S. "Swallow," Capt. Woolfran Cornwall, to convoy transports to Londonderry. March 21. To Navy Board to provide transports for 1,500 men, with 12 days provisions. March 26. Letter to Lords of the Council about convoy, and transports for 1,500 men, etc. March 28. Orders to Navy Board as to extravagant demands of shipmasters at Liverpool, directing the best possible agreement to be made. April 5. Letter to E. Nottingham stating that the transports would be ready by the 10th. April 6. Orders to any of H.M. Ships that shall first come to Chester waters to convoy transports. April 10. Orders to Navy Board to send to Chester or Liverpool a month's provisions for the "Jersey" and "Swallow." April 15. Orders to same to provide shipping for 1,800 instead of 1,500 men. April 16. Orders to same to hire shipping for officers' horses. April 18. Orders to same to lodge a sufficient quantity of victuals at Milford, with an agent for the Fleet on the coast of Ireland. April 20. Orders (on reading E. Nottingham's letter of date signifying the King's pleasure that the ships designed for the Mediterranean and Narrow Seas should join Admiral Herbert's Fleet at once, and rather than lose time should sail singly) directing eight ships, viz. the Rupert, Warspight, third-rates; Tiger Prize, Hampshire, Owner's Love, Charles, Thomas and Elizabeth, and Cygnet, to proceed at

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once to Plymouth to join Admiral Herbert's Fleet, and if on their coming there they can get no advice where to find him, then to proceed at once to the coast of Ireland to strengthen the said fleet, and for their readier finding him to take notice that the last letter from the Admiral bore date the 14th instant from Kinsale. *Signed* P. Bowles. By command of the Commissioners of the Admiralty. [Delivered in to the Committee this day pursuant to Order of 6 Aug. Com. Book. A note in this book, under 10 Aug., states that E. Rochester took this and the two preceding papers home with him this day.]

(m.) 9 August. Declaration, on oath, of Major Richard Done, late of Tuber-Dalough, in the King's County, Ireland. Deponent was in Dublin in January last, and hearing that a vessel was arrived from England at Ring's End, went with one Theophilus Taylor and the master of a vessel to see who the passengers were. He counted 70 men in red coats, and among them Col. Richard Hamilton together with 11 other officers. The Colonel, whom he knew well, went with several others to a tavern, and from the next room Deponent heard plainly their discourse. After salutations, the Colonel broke out into loud laughter, saying he could not forbear it, thinking how finely he had shammed the Prince of Orange into a belief that he had interest and inclination enough to prevail with Tyrconnel to lay down the sword and submit to him. Col. Dempsey, who had come to congratulate him, replied—"What interest could you have in the Prince, or how got you it, to persuade the Prince to believe you?" Hamilton answered "I wanted not friends to persuade him into a confidence of me, on which account I got my liberty and this"—(pulling out a pass from the Prince, which he said was for himself, 11 officers, and 140 soldiers, which were all he could get account of to be in Liverpool, Chester, and Holyhead, else he believed he could have got a pass for 700 as well as seven score, adding "Had King James been so well advised as he might, he need not have come out of England for want of friends to support him.") After much other discourse to the same effect, a coach came to the door with Sir Richard Nagle and Secretary Ellis. Hamilton said jokingly to Ellis "How, Brother Sham, are you there? The Kingdom of Ireland is beholden to you and I, for diverting this storm off from them; else you had had ere this an enemy in the bowels of the Kingdom." Then turning to Nagle, he said, "Could you think, Sir Richard, that Ellis could have such an interest with the Lord Deputy as to persuade him to lay down the sword and submit to the Prince?" Sir Richard replied, "It is a wonder to me that it could be thought or credited that he could do it alone, there being in England at that time many Irish gentlemen, who, had they been consulted with, could have informed the Prince that Ellis' interest was not sufficient to do it." After this they took coach, and went away together. In March following, Deponent and some other gentlemen in Dublin, having shipped some merchandise for England for their families, were on shipboard waiting for a wind. While there, Tyrconnel sent a party of foot and fetched them ashore, and imprisoned them for fourteen days in Dublin Castle. During that time Deponent was brought three times before the Council Board, where he saw sitting in Council the Marquess of Powis, and walking in the Council

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Chamber Sir James Pool, of Pool Hall in Werrall, Cheshire, and Mr. Massey, of Puddington, in Werrall, both Romanists. Fearing their lives in danger, Deponent and others bribed Father Geoghegan, Tyrconnel's confessor, with 100 guineas to get them conveyed to Skerries, where they got passage to Holyhead, and on landing went to Mr. Owen's, the postmaster, and complained to him for allowing Col. Hamilton to go over. Owen showed him a copy of the pass, attested by three justices of the peace. *Signed* Rich. Done. [Delivered in to the Committee by Major Done this day. Com. Book 9 Aug. See also Annex (r) below.]

- (n.) 9 August. Information, on oath, of John Philipps. In December and January last the Protestants of Ireland were in expectation that some forces would have been sent from England to reduce the kingdom to the English crown. Informant believes that if any person had then been sent over to demand the sword of Tyrconnel, the latter would have given it on very easy terms, for about that time he was observed to have melted down plate, bought up guineas and shipped most of his best goods on board a ship belonging to one Golden, and it was said his Lady was to have gone. But the captain of the little frigate that always attends the Chief Governor, having notice that his Lordship designed to give the command to another, sailed away without his knowledge, which made his Lordship believe he had some design on the vessel, on which his goods were stored, whereupon he brought his goods on shore again, and ordered the ship to Galway, as Informant has heard and believes, for presently after, about sixty cars, all loaded, went by Informant's house under a great convoy commanded by Col. William Nugent, Tyrconnel's nephew, and these cars went to Athlone and so to Galway; and though it was said to be ammunition, yet the Irish as well as the English said it was his Lordship's goods. Informant has heard that the Earl of Limerick, Lord Gormanston and several others went to Tyrconnel about Christmas last, and desired him to lay down the government, saying that, if he would not, they would lay down their Commissions, it being a vanity to think of standing out against England; to which, it was said, Tyrconnel answered "My Lords, what would you have me do? There is none as yet come to demand the sword. Would you have me cast it into the ditch?" About Christmas last, and after the Irish had such apprehensions of an army coming from England, that some of them sent their best goods to Protestants' houses to be kept (in particular L. Limerick sent his to Capt. Molyneux, the L. Chief Baron Rice had some with Sir Joshua Allen, and L. B [*illegible*] sent his to Lady Clancarty), some Irish gentlemen of Westmeath said they daily expected conditions from England, which they would accept and live quietly. A Popish gentleman told Informant about Christmas last that the friars had been with Tyrconnel, who advised them to hide away their best goods, as books and manuscripts, and that they had done so, and all but two or three of the friars at Mullingar, who were old and sick, left the convent there. Tyrconnel at that time was observed to be much kinder to the Protestants than formerly, but on the coming over of the Marquis de Pont from France and Col. Hamilton from England he was strangely altered and said he would lay the Kingdom in ashes before he would give up the sword. Still

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if 500 men had been then sent from England, with arms, ammunition and money, and a general to give Commissions, Tyrconnel would have been forced out of the government, there being hands enough ready to have done it. But finding the King could not spare any forces, he began to be severe to the Protestants, and fell first on Informant, whom he imprisoned and tried for his life, swearing he had a Commission to be Major of horse from the Prince of Orange, and Informant had all his goods taken away, and on his acquittal Tyrconnel declared that if one county would not hang him, another should, and ordered him to be arrested again, to escape which Informant has fled to England. *Signed* John Philipps. [Delivered in this day to the Committee. Com. Book.]

- (o.) 13 August. Copies of Orders given by Admiral Herbert (now Earl of Torrington) before the opening the Patent of the present Commissioners of the Admiralty, vizt:—March 2. Extract from letter to Navy Board, recommending that ships be hired to transport 6,000 men, say 4,000 from the river, and 2,000 from Harwich; that vessels be hired at Liverpool for transporting 1,200 men to Londonderry; that at Topsham or thereabouts a ship be hired for taking to Londonderry 5,000 arms, 400 barrels of powder, etc., and 500 hand-grenades; and that all available ships be sent at once to sea, though they have but two months' provisions on board. March 4. Extract from same. In addition to the ships for 6,000 men, it is desired that other vessels may be provided for receiving 2,000 men at Gravesend, and carrying them to Scotland. March 5. Order to the Captain Graydon, of H.M.S. "Saudadoes," at Harwich, to sail immediately for the Downs, there to await further orders. March 5. Similar order to Captain Tollmach, of H.M.S. "Lark," at Harwich. March 8. Extract from Letter to Navy Board, desiring that barges and ships may be got ready for receiving ten battalions, vizt, at Deptford and Greenwich those for Gravesend, and at Colchester and Ipswich those for Harwich. *Dated*, Admiralty Office 13 Aug. 1689. *Signed*, P. Bowles. *Endorsed*, 13 Aug. '89. Mr. Bowles' paper relating to Irish affairs whilst E. of Clarendon was concerned. [Delivered in to the Committee this day by Mr. Bowles, as ordered on 9 Aug. Bowles added that this was all the account he could give while E. Clarendon was concerned. Com. Book.]
- (p.) 13 August. Two Lists of Officers of the late Sir Robert Peyton's Regiment, vizt:—(1) As they were mustered on 1 March 1688-9, being the first muster taken of them by the Commissary of the Musters; (2) As they were mustered in July 1689. *Signed* D. Crauford. [Delivered in to the Lords' Committee this day by Capt. John Dunbar. Com. Book of date.]
- (q.) *Undated*. List of Officers made by Col. Gustavus Hamilton, who were formerly in L. Mountjoy's Regiment in Ireland.
- (r.) 15 August. Letter from Richard Owen to the Hon. John Browne, Clerk of the Parliaments. Has received the order of the Committee, requiring him to send an account of Col. Richard Hamilton's pass. Remembers the Colonel's coming to Holyhead, and going to sea within three or four hours after his arrival. Had no orders to examine passes, but found out from him that he had come through Denbigh, Chester, and Beaumaris, where he had discoursed with Mr. Francis Bulkeley, who acted

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as Deputy Lieutenant, and a Justice of the Peace, and that he had been examined at Denbigh and had there shown his pass, and that he was going over by the Prince of Orange's order. Could urge him no further, being only postmaster, and not a magistrate or constable. Moreover the Colonel and his servants were well armed, and there were many Irish soldiers about. *Signed*, Richard Owen, Holyhead, 15 August 1689. [On 9 Aug. the Committee ordered that Mr. Owen, Postmaster of Holyhead, do send their Lordships a true Copy of Col. Ried. Hamilton's pass for Ireland, with all possible speed. Major Done had sworn that he had seen a copy of the pass at Mr. Owen's. Com. Book 9 Aug. See also Annex (m).]

(s.) Undated: List of witnesses, marked as sworn. *Noted* "Irish Affairs." All of them appear in the Com. Book as having given evidence before the Committee, except the following:—

W. Nicholson,	Ralph Charters,
Rob. Blennerhasset,	Edwd. Bentley,
Capt. George Durbar,	Wm. Hedrington,
Mr. Thos. Spaith,	David Cairnes,
Mr. Alexr. Erwin,	Wm. Williams,
Capt. Rob. Rosse,	Joseph Stroude,
Mr. Wm. Armsley,	John Tubucan,
Capt. John Craven,	George Phillips.
Sergt. John Osborne,	

102. June 15. Price's Bill.—Commons' Engrossment of an Act to empower Roger Price, Esquire, to make a jointure to his wife out of the Manor of Westbury in the county of Bucks. Enacts that Roger Price, having lately married Elizabeth, may settle on her, for her jointure during her life, the Manor of Westbury and other lands in Bucks and Oxon, except the Manor House and grounds and some closes near it, and gives the like power to his brothers George, Thomas, Edward, Ingham, and Joseph (his brother Charles being dead) in respect of their wives. Also any son born after his father's death shall come into the property in his turn, as if he had been mentioned in the settlement. *Parchment Collection*. [Brought from the Commons this day, but rejected on 1st July after hearing Counsel at the Bar, *Mr. Trevor* and *Mr. Ward*, against the Bill, and *Mr. Tryst* and *Mr. Dormer* for it. L. J., XIV. 244, 261, MS. Min. 1 July. See also next paper.]

103. June 17. Price's Bill.—Petition of George Price, Edward Price, Gent., Mrs. Anne Price, and Mrs. Rebecca Brandreth. Petitioners have a right in remainder in the entailed estate. The Bill tends to the prejudice of the son and heir, on whom it is entailed, and there is nearly 700*l.* a year out of which Roger Price may give a jointure to his wife and make provision for his younger children. Pray that the Bill may not pass. [Read this day, after the Bill had been read 1^a L. J., XIV. 246. See preceding paper.]

104. June 17. *Atkyns v. Commissioners of the Great Seal*. Petition of Sir Robert Atkyns, Knight of the Bath, and Chief Baron of His Majesty's Court of Exchequer. Ever since the Statute of *Carlisle* in 16 Edw. II. the course of levying of fines by persons in the country who cannot well come up to London has been by a writ called *Dedimus Potestatem*, whereby power is given to certain Commissioners of good worth and credit to receive the cognizance or acknowledgment of the parties who are to levy the fine in the country, which Commis-

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sioners are to certify the cognizance to the Judges of the Court of Common Pleas, where the fine is to be afterwards levied and perfected. This writ has been always drawn and engrossed by the Cursitors, and by them brought to one of the 12 judges, at the Cursitors' choice, to be approved and signed, a fee of 6s. being paid for the Judge and 4d. for his clerk, and being so signed it never was refused to be passed at the Great Seal by the Lord Chancellor or Lord Keeper. The profits of these Judges' fees, being considerable, have sometimes, but of late by general consent of all the judges, been farmed out at a certain sum, paid every term to every Judge alike, the farmer having the overplus, but it was never so put to farm if a single Judge dissented. Some of the present Judges, observing that several of the Cursitors out of respect to Petitioner, apply to him rather than to his brother Judges, though Petitioner has never been so mean as to seek this profit, have laboured to induce him to consent to farming out the fees again, and on Petitioner's declining, have prevailed with the Commissioners of the Great Seal to appoint a new officer, one Samuel Keck, as Receiver of the said writs and fees thereon. This is arbitrary and unjust, contrary to the ancient and constant course, and burdensome to the people by erecting a new officer. It tends to great delay in the passing of fines and is much to the prejudice of Petitioner's just right and profit, and a breach of his privilege as an Assistant to their Lordships. Prays for relief. L. J., XIV. 245. [In Committee for Privileges, to whom the Petition was referred this day, the *L. Chief Baron* opened his own case. Last term he received of the Cursitors 30l. or 40l. A Cursitor's deputy lately forged his hand to six or seven writs of *Dedimus*. From hence the Commissioners took occasion to appoint an officer to receive the Judges' fees, and stamp the writ, and he sends the Cursitor to what Judge he pleases, by which means Petitioner this term received only 26s. This officer is new, and was never known before. The Commissioners' order of the 8th inst., appointing Mr. Keck, was then read. *Abraham Nelson*, Cursitor: The course used to be, when they had made out a writ of *Dedimus*, to go to any Judge. It has been farmed these last 20 years, but the farm has been out these two or three years. Thinks it is necessary for all the Judges to consent. There was no delay when it was farmed; the Judges did not neglect to sign. The Judges always had this fee. *George Davies*: The writs were never stamped before L. Chief Justice North's time. When it was in farm, the Judges' clerks delayed us, pretending their masters were busy. *John Shorthose*: The farmers have pretended that when a *Dedimus* has been long, it was two purchases, and so demanded two or three fees. (Priv. Book 26 June.) The House ordered Counsel to be heard at the Bar (L. J., XIV. 259. 268), but the matter was subsequently agreed to be referred to the two Chief Justices (MS. Min. 5 July)].

Annexed:—

- (a.) 27 June. List of Cursitors sworn at the Bar this day, to give evidence in this cause, pursuant to order of Committee for Privileges of previous day. (Priv. Book, 26 June.)

105. June 19.—*Tunstall v. Smith*. Copy Transcript of Record. The Writ, addressed to C. J. Holt, is dated 8 June 1689. Richard Smith, Esq., being owed by Richard Huggins 100l. and 30s. damages, on a Judgment obtained in the Court of King's Bench in Michaelmas Term, 29 Car. II., and also 108l. for rent of a messuage in St. Martin's-in-Fields, leased by Huggins, died leaving Thomas Smith his executor, during the minority of testator's son Richard. Thomas proved the Will

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and in 32 Car. II. obtained execution and was about to sue out a writ of *Fi. Fa.*, when Barnabas Tunstall, Esq., of the Middle Temple, by conspiracy with Huggins, got a judgment signed against Huggins for a fictitious debt of 160*l.* in Trinity Term following, at the suit of Matthew Webster, and under a writ of execution on 18 June 1680 took possession of and removed Huggins' goods. Thomas, thereupon, in Jac. II. sued Tunstall in an action on the case in King's Bench. The Court allowed the action and referred the question of damages to a jury, who found Smith entitled to 188*l.* damages and 20*s.* costs. The Court added 8*l.* 10*s.* for further costs and signed judgment in Smith's favour on 4 Feb. 1687 for 197*l.* 10*s.* Tunstall assigns as errors that the matter of the action was insufficient in law, and that judgment ought to have been given for himself and not for Smith, and prays that the same may be reversed and Smith ordered to rejoin. Smith's Attorney below was Richard Gates, and Tunstall's Basil Knight. Smith's Attorney in Parliament was John Lilly. *Noted*: Examined 28 June 1689. [The Writ of Error was brought in this day. L. J., XIV. 248. The Cause was first heard on 6 July. *Mr. Ward* (for Plaintiff): It is upon a special action. There was a debt and damages unpaid by Huggins. Smith made his Will. We will prove it, but not when or where. Thos. Smith, the Executor, obtained an award for execution. It is the first that ever was brought of this nature. There was no money due to Huggins. *Mr. Serjeant Tremaine* is heard for Defendant. After a reply, Counsel withdraw. Part of the Award read by the Clerk. After a debate as to the form of bringing the Writ and the words therein, [Ordered, That Pollexfen, C. J., Rokeby, J., Eyre, J., and Lechmere, B., attend on the 8th inst., when the House will hear the Errors argued.*] Later on, the *L. C. Justice* was heard as to the Writ and stated his opinion that there was an error in it. It was then ordered to be withdrawn for amendment. (MS. Min. L. J., XIV. 270.)—On 24 Oct. Counsel were called in again. *Mr. Ward*: It is a Writ of Error against a Judgment in the King's Bench in Michaelmas Term, 29 Car. II. In all accounts there must be a proper person against whom the action is brought. Cites *Hobart's Reports*, p. 251, and fol. 6 and 8. There are two causes set forth, one actionable, the other not. But the jury found both, and so there is cause for reversal of the Judgment. If he had said he had taken out execution, it had not been denied. The question is whether Webster's judgment was fraudulent or not. The whole demand is but 100*l.* *Mr. Holles* (for Plaintiff): I think this is a cause of the first impression. *Mr. Recorder* (for Defendant): The inducement of the action is Huggins. He owed Richard Smith 108*l.* for rent. An action on the case is not a forced action; it arises upon the accident. Cites *Skelhorn v. Harrison* in *Croke*, 714, and 2 Rolle's Reports, fol. 212. This is not the Defendant himself, but a stranger. The matter is confessed by the demurrer. *Mr. Serjeant Tremaine* (for Defendant): "Richard Smith, Executor during the minority," that is only surplusage. 7 Hen. IV. 2. B. in *Henslow's Case*. Where the wrong is done in the lifetime of the Executor, he need not bring his Letters into Court, nor the Will. This is an apparent wrong and cheat. Counsel withdraw. The Speaker, Sir Rob. Atkyns, reports the case. After debate, Judgment affirmed. (MS. Min. L. J., XIV. 324.)]

Annexed:—

(a.) 13 August. Petition of Defendant that the hearing may be put off, his Counsel, Serjeant Tremaine, being in Cornwall.

* This order is struck through.

Endorsed as read this day, and the order (L. J., XIV. 309) allowed to be till the first Monday after the Recess. MS. Min. No entry in L. J.

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106. June 21. Wyndham *v.* Wyndham.—Petition and Appeal of Edmond Wyndham, Esq. Petitioner's grandfather in 1676 brought a bill in Chancery against Dame Anne Wyndham, relict and executrix of Sir Francis Wyndham, to redeem certain lands and to have an account of profits received towards satisfaction of the mortgage money, to which she pleaded the Statute of Limitations. The suit was afterwards revived by Petitioner, whereupon she pleaded the Statute as before, and insisted on an account pretended to have been made in 1664, wherein 2,912*l.* is stated due to Sir Francis, and brought a cross-bill to compel Petitioner to redeem on the foot of the account or be foreclosed, and the L. Chancellor Jeffreys decreed accordingly. Appeals from that decree, and prays that proceedings may be stayed. *Signed* by Petitioner and *countersigned* Charles Porter and Nic. Hooper. Read this day L. J., XIV. 251. [The Appeal was heard on 26 Nov. *Mr. Trevor* (for Appellant): In 1647 Sir Edw. Wyndham and Sir Hugh Wyndham joined in a mortgage. *Sir Charles Porter* (for Appellant) speaks to the equity of redemption and the making up the account. Depositions read concerning Minhead. *Sir W. Whitelocke* is heard for Respondent. *Mr. Finch* (for Respondent) speaks to the mortgage in 1647. The question is, whether they ought to redeem, and upon what terms. They mention a thing that was not in the Bill. The House then affirmed the judgment and, after debate, ordered Appellant to pay costs. MS. Min., 26 Nov., L. J., XIV. 354.]

Annexed :—

- (a.) 5 July. Answer of Dame Anne Wyndham, widow, Executrix of Sir Francis Wyndham. Sir Hugh Wyndham, at the time of the mortgage, was but son and heir apparent of Sir Edmund Wyndham, and joined in the mortgage merely for conformity's sake, and the whole equity of redemption was in his father. An account was duly stated at 2,912*l.* 16*s.* 0*d.*, on 24 June 1665, and in 1669 Sir Edmund released the equity of redemption to Sir Francis. Appellant's bill was dismissed on 22 Nov. 1667, when the Court also, on Respondent's cross-bill, allowed Appellant to redeem on payment of the account so stated, or in default of that and other conditions, to stand foreclosed; and on 9 Feb. 1667–8, foreclosure was decreed accordingly. Respondent, to reimburse herself the said sum, has only Treborrow farm, worth 90*l.* a year, and the reversion of Hemsford not worth more than 80*l.* a year. The Appellant had liberty to redeem and would not. Prays to be dismissed with costs. *Signed* by Respondent; *Countersigned* Will. Gimlott. *Endorsed* as brought in this day.
- (b.) 12 Nov. 1689. Petition of Appellant for a copy of the pretended account and for a day for hearing. L. J., XIV. 338.
- (c.) 12 Nov. 1689. Order of the House on preceding Petition. L. J., XIV. 338. *In extenso.* Appended to next paper.
- (d.) 20 Nov. 1689. Petition of Appellant that the Respondent may be ordered to deliver in the original of the pretended account to the Clerk of the Parliaments. L. J., XIV. 347.

107. June 26. Sir Adam Blair, &c. — Articles of Impeachment of High Treason and other high crimes and offences against Sir Adam Blair, Captain Henry Vaughan, Capt. Frederick Mole, John Elliott, Doctor in Physic, and Robert Gray, Doctor in Physic. L. J., XIV.

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255-6. *In extenso. Parchment Collection.* [Brought up this day and read the next. *See also* No. 118.]

108. June 27. *Creech v. Maundrell.*—Petition of Henry Creech. Petitioner inherited certain lands from his cousin John Somerset, late of South-Brent, in Somersetshire, which were claimed, under a pretended charitable trust, by Robert Maundrell and others, whose title, however, was rejected by a jury. The trustees, being rich, harassed Petitioner with further litigation, and, on Petitioner being forced to suffer a non-suit in a trial for ejectment, they obtained thereon a decree in Chancery *ex parte* in 1678. The so-called trustees have never erected any charity, but have converted the profits to their own use. Prays that the decree may be reversed. *Signed* by Appellant, and *countersigned* W. Swayne, Jo. Keene, and Jo. Hawks. [Read this day. L. J., XIV. 257. Appeal withdrawn, 6 Feb. 1692-3, *ib.*, XV. 216.]

Annexed:—

(a.) 27 June. Order of service on preceding petition, with affidavit of service subscribed. L. J., XIV. 257. *In extenso.*

(b.) 14 Nov. Petition of Appellant for an early day for hearing. Signed by Counsel, Jo. Hawles and Edw. Strode, who certify there is good cause of appeal. L. J., XIV. 342.

109. July 3. *Benyon v. Bullingham (Privilege).*—Petition of John Bullingham. Benyon has never taken any steps to obtain a trial, as directed by their Lordship's Order, annexed, of 19 June 1678, and Petitioner is still ready to justify his title to the quarry in question. Prays to be allowed to proceed on his judgment, notwithstanding the said order. Written on the next page, is a copy of the Order above referred to. [Read on the 29th. Order of 1678 read, but Petition not being attested, left on the table (MS. Min. of date). Read again this day, and Order revoked, L. J., XIV. 266. *See also* Calendar, Ninth Report, Appendix No. 590.]

110. July 4. *Pilkington and others v. the King.*—Copy of Writ of Error and transcript of record,* brought in this day, L. J., XIV. 268. Affixed thereto is the tenor of judgment of the House, *ib.* 283. *In extenso.* [The MS. Min. record as follows:—13 July. Counsel called in. No Counsel appearing for the King, *Whitaker* (sworn) deposes he served the order upon the Attorney General. *Mr. Ward* (for Plaintiff): States the Information 24 June, 34 Car. II. The Information sets forth that a Hall was held in London; Sir John Moore held the Court, which was adjourned, and he and divers others stayed after the adjournment. The Attorney-General prosecutes, and then Ford, Lord Grey and twenty others come in to be Defendants, and they plead severally not guilty, and then the *Venire* is returned. 10 were found not guilty and 14 found guilty: 15 were not tried. They set fines upon each particular. Throughout this Record it is not in any way allowed that Sir John Moore had any right to hold this Court. The citizens said Sir John Moore had unlawfully adjourned that Court that did not belong to him. He does not in the Record say in what place the Hall is. When they come to give a day over to appear at the *Nisi Prius*, he is wholly omitted, and that we conceive

* A translation of the Information, here set out in Latin, is given *in extenso* in Howell's State Trials, Vol. IX., pp. 221-6.

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to be a discontinuance. *Mr. Holles*: We are Counsel for all persons in the Information. When a fine is assessed upon an Information, it is for all the fines laid. Cites Rolles 767 *Alcoke & (sic)** Counsel then withdraw, and being called in again, are asked if they know who were the Judges that gave this judgment. *Mr. Ward* says it does not appear to them. They withdraw. The House then ordered the Judges to attend, as in L. J., XIV. 280.—On 16 July *Sir Francis Withens* and *Sir Thomas Jones* were called in, to give their grounds and reasons for their judgment. The Speaker told them they were brought here. *Sir Thos. Jones*: It appears by the Information it was tried before Saunders, and at the Guildhall. I cannot tell any exceptions, why we should not give judgment upon it. *Sir Francis Withens*: I have been sick this fortnight. It was not under my door. I have recollected what I could. The Information sets forth that a Guildhall was held as in the Record. He discharged that assembly, and then the Defendants came and did riotously, seditiously, and unlawfully go forward to take the Poll, and did beat, wound, and assault the Lord Mayor. To this a Not Guilty was pleaded, and it was heard before L. C. Justice Saunders, and so it came to us. It was done to the terror of the King's people. [*Mr. Ward*] The obj[ections] I have are that an Information did not lie. [*Sir F. Withens*] Here was an extraordinary great riot found in the City. We were not at the trial; we learned only by the Record. We considered the nature of the thing, and the persons. We went with the greatest moderation that could be. The biggest fine, that of Shute, was 500*l.*, and [the others were] less, as we could instruct ourselves. Those were purely the reasons we went on. *Sir Thomas Jones*: A jury of very substantial citizens had found them guilty. We fined them as persons of very great credit and estate. There are one or more fined higher than my brother mentioned—1,000 marks. In the case of *Sir Francis Winkfeld*, (*sic*) *Croke* 251,† he was indicted upon a riot upon a rescue. Cites *Croke* 506,‡ an Information for a rescue near Charing Cross. We fined them upon the best consideration or information we could get.—They withdraw, and the *L. Privy Seal* states the case. Then the House asks the opinion of the Judges in this matter. *Lechmere, B.*: The matter is whether there is error on the Record. The Record is that a Hall was called, and *Sir John* adjourned the Court; and so relates the riot. All the Defendants plead Not Guilty: the jury find on some and not on others. The first point to be considered by your Lordships is whether an Information lies. I think an Information does not lie. [11] Hen. VII. c. 3 was repealed by 1 Hen VIII., [c. 6] and the common law restored. Upon this Information *Ford*, Lord Grey was found Guilty, and a fine and *capiatur* against him. I say a *capiatur* does not lie upon an Information against a nobleman. It may lie upon an indictment. Third point. Admit that an Information does lie, admit that a *capiatur* does lie against a nobleman. Here are *Pilkington* and Lord Grey convicted, and others acquitted. Here is a judgment against those convicted and those acquitted, and therefore erroneous. *Eyre, J.*: What was urged at the Bar I find to be false, for there it is in the Record *legitimo modo*. You cannot enter into matter of fact. Informations have been very old, and before that Statute. There is a *capiatur* entered. *Mr. Pilkington* and *Shute*

* See the case of *Alcock and Pagrave* in Rolles's Abridgement, ed. 1668, p. 767, Title "Error."

† *The King v. Sir James Wingfield and others.* *Croke's Rep.*, Vol. IV., p. 251.

‡ *Evans and Cottington's Case.* *Croke's Rep.*, Vol. IV., p. 506.

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did appear by person, and after by Attorney, and to one, Jekyll, there is not a continuance. So it lies with your Lordships whether a *capiatur* lies. *Question*: Whether this Judgment against Thos. Pilkington and others shall be reversed? Contents 26. Not Contents 19. Tellers; E. Bath and E. Feversham. Resolved in the Affirmative. (MS. Min. July 13, 16. L. J., XIV. 280, 283.)]

Annexed:—

(a.) 20 July. Petition of Sir Thomas Pilkington, Knt., Anne Shute, Executrix of Samuel Shute, Henry Cornish, son and heir of Henry Cornish, deceased, Thomas Cooke, Executor of Joyce Player, Executrix of Sir Thomas Player, Knight, Slingsby Bethell, Esqre., Sarah Jenks, Executrix of Francis Jenks, John Deagle, Richard Freeman, Robert Kaye, John Wickham, Samuel Swinnock, and John Jekyll. The judgment of the King's Bench, imposing a fine of 4,104*l.* having been reversed by their Lordships, on a Writ of Error, Petitioners ought, as they are advised, to be restored to their 4,104*l.* The invasions made on the rights of the City and of Petitioners by Sir John Moore, in imposing Sir Dudley North and Sir Peter Rich, Sheriffs for the City in 1682, without due election by the citizens, was the cause of the unjust verdict and judgment. Pray that a Bill may be brought in to reimburse Petitioners. *Signed* by all the Petitioners but Shute, Cooke, Jenks, and Wickham. [Read this day. "Any Lords are at liberty to bring in a Bill, and so nothing "done in it." MS. Min. of date. L. J., XIV. 287.]

111. July 6. Sydenham *v.* Terry.—Petition of Sir John Sydenham. Respondent, John Terry, sued Petitioner in Chancery to compel him and Strode, his joint trustee, to grant a lease for life of certain lands of Lord Pawlett at Yatton, on surrender of the old lease which Respondent pretends is lost, and the Court on 26 June 1689 decreed accordingly. To grant this lease would be a breach of trust, nor is Lord Pawlett himself, to whom the estate belongs, made a party. Prays that the decree may be reversed. *Signed* by Petitioner and countersigned Jo. Hawles and Edw. Strode. Read this day. L. J., XIV. 270. [The Appeal was heard on 22 July. *Mr. Ward* (for Appellant): The Decree is that Sir John Sydenham shall make a lease of part of the estate of L. Pawlett. But a trustee is living; Mr. Strode is to join in the executing this lease. The lease is determined by death. "If John Ward, the son of John Ward, of Sheering in Essex should so long live." The lease is between 30*l.* and 40*l.* a year. Sir John Sydenham is to compel Mr. Strode; if he cannot, he is tied by the heels for ever. He is no party. It is too hard to be put on Sir John Sydenham. *Mr. Holles* (for Appellant): Here is a Decree against a single trustee to compel another to join with him, which is very hard. The person for whom he is trustee must be made a party, Sir John must obey it in specie. *Sir Ambrose Phillipps* (for Respondent): His father takes this to be a settlement. The lease was burnt; L. Pawlett's family had a counterpart. 28 Oct. 1685 they agree to change the life. This is a matter of form and not of right. Strode was a Defendant in the Court of Chancery. They have appealed without bringing Mr. Strode before your Lordships. *Sir Charles Porter* (for Respondent): This cause is not worth sixpence. We have enjoyed these twenty years without any disturbance. There was a Bill brought in 1685. We come to make a new application to the heirs of the manor. There have been a hundred leases made by these trustees. The Agreement read. After a reply,

the L. Privy Seal stated the case, and the Appeal was dismissed. (MS. Min. L. J., XIV. 290.)]

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Annexed:—

(a.) 15 July. Answer of John Terry, Gent. Respondent, who is interested in the tenement at Yatton, of 33*l.* a year, for the remainder of a term of 99 years, granted to his father by John Asburnham, Esq., and Lady Pawlett, his wife, if John Ward, of Sheering, in Essex, should happen so long to live, was called on by L. Pawlett's trustees to renew a further estate in the premises, and, on coming of age, he agreed with the then surviving trustees, except Edward Strode, who was then in prison, for the exchange of John Ward's life in the premises, and taking a lease thereof for Respondent's own life, for which he was to pay 36*l.* as a fine, though in reality Ward's life was a better one than his own. Strode then sued for recovery of the premises, taking advantage of the accidental burning of the lease, to pretend that no such lease, determinable on Ward's death, was ever granted, or, even if granted, yet that Ward was dead. Respondent then brought a Bill in Chancery against Sir J. Sydenham and Strode, to have the benefit of the agreement, and a trial at law being had as to the question of lease or no lease, the Jury found for Respondent, and the Court of Chancery decreed Sydenham to execute a new lease to him. Appellant has not made Strode a party to the appeal, as he ought to have done. Appellant's objection to L. Pawlett not being a party to the suit in Chancery comes too late. Prays that Appeal may be dismissed with costs. *Signed* by Respondent, and *countersigned* Ambr. Phillipps and W^m Hancock. *Endorsed* as brought in this day.

(b.) 16 July. Petition of Respondent for an early day for hearing. L. J., XIV. 282.

112. July 6. Wyseman *v.* Terry. Copy Transcript of Record. Two Writs, with the returns thereto, are given, viz^t. to Herbert, C. J., dated 2 June, 4 Jac. II., and to Holt, C. J., dated 18 June, 1 W. & M. Terry brought an action of ejectment in the Court of Common Pleas, claiming 20*l.* damages, against Sir Richard Wyseman, of Tyrrell Hall, Essex, for having dispossessed him of the manor of Rockells and lands in Willingale Doe, Willingale Spanne, Porton Alta, Cugar, Shellon, Cowells, Thundersley, and North Benfleet, in that County, which had been leased to him for 5 years by Hercules Horsley. The Court granted him possession, and the judgment was affirmed in King's Bench, with 7*l.* costs against Wyseman, under the recent Statute, by reason of his delaying execution by pretext of error. Appended to the Transcript is the Tenor of Judgment of the House on 19 July. L. J., XIV. 286. *In extenso*. Terry's Attornies below were Ralph Grainge and William Turbill, and Wyseman's were John Brocket and Arthur Lake. [There is no separate entry in L. J. of the Writ having been brought in, but in L. J., XIV. 286, the date is stated to have been 6 July. The Cause was heard on 19 July. *Mr. Molloy* (for Plaintiff): It is a Judgment by default upon an ejectment. The Judgment ought to have been for Plaintiff. Cites the Act of Frauds and Perjuries and Coke's Entries 257. *Mr. Ward* (for Defendant): The answering (?) is no error. The day not appearing to be signed, no error. They have no good Writ of Error. Counsel withdraw. Judges heard. *Eyre, J.*: The Record is good; there is no error. The House then affirmed the Judgment. (MS. Min. 19 July. L. J., XIV. 286.)]

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Annexed:—

(a.) 19 July. Petition of Sir Richard Wyseman, Knt. Petitioner brought his Writ of Error upon an affirmation of a judgment in ejectment in the King's Bench obtained against him by Stephen Terry in the Common Pleas, and assigned for error that Sir Edward Herbert, C. J. of Common Pleas, transcribed the Record into the Court of King's Bench when he was out of his office, and had no power to do so, and to prove this Petitioner prayed a *Certiorari* to C. J. Holt to certify the truth thereof. Petitioner had ten days given to return the *Certiorari*, when their Lordships, to his surprise, ordered the cause to be set down for hearing. Petitioner cannot prove his error without the return of the *Certiorari*, and is advised the error will hold good, for that C. J. Pollexfen, notwithstanding the Act of this Session for reviving and continuing Actions, &c., ordered a new Writ of Error to be directed to him, because Sir E. Herbert had not then power to act, as by annexed affidavit appears. Prays for time to return the *Certiorari*. *Endorsed* as read this day; nothing done on it. MS. Min.

(b.) Affidavit of Francis Kellett that a Writ of Error was brought in Trinity Term last between the parties, which was not transcribed in the late King's time. C. J. Pollexfen thereupon ordered that new Writs should be brought, and that his Clerk should allow them without fee, and be paid only for transcribing the Record. Deponent then sued out a new Writ, and afterwards found that the transcript was surreptitiously brought into the Court as of Easter Term last. *Sworn* 15 June before W. Dolben.

113. July 10. *Ashfield v. Ashfield*.—Petition of Dorcas, Lady Ashfield Widow and Executrix of Sir Richard Ashfield, Bart., deceased, claiming certain lands in Sussex as her jointure. The substance of the Petition is set out in L. J., XIV. 290–91. *Signed* by Petitioner and *countersigned* Ambr. Phillipps and H. Finch. [Read this day, L. J., XIV. 272. The Appeal was heard on 23 July. *Sir Ambrose Phillipps* (for Appellant): We complain of part of the decree. The estate was to the value of 18,000*l*. The bond was set afoot to get in all the estate. This jointure in 1675 was 450*l*. a year in the whole, besides the manor and farm of Shripney. There were some quit rents. The chief rents were about 15*l*. a year. The manor and farm of Shripney lies in the manor of Southbersted. Within the deed she has as much right to the quit rent as to Shripney and all other lands elsewhere in Sussex. They go upon an intent. Sir Richard sells Northbersted, and makes a deed in 1678 that the estate he had was for his younger children. That did not concern us. He makes a settlement in 1678, and in general words he settles Shripney. She knows nothing of it. It wants the general words "all his lands elsewhere in Sussex." The deed was thrown into our coach. This intendment is contrary to the deed, "All other manors, reputed manors, lands, tenements and hereditaments in Southbersted, and all other my estate whatsoever in Sussex;" and now they say it was intended she should not have the quit rents. Shall it be said, A man did not intend this to be a jointure, when the law says it is so? He declares upon his death bed he would give all his estate in Sussex. Says the Court: You, my Lady Ashburnham never intended to take these quit rents. Why? Because you did not set out your deed in 1675 in your Answer. *Mr. Finch* (for Appellant): States the case in Chancery. They being defeated at law, come back to Chancery.

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They make the Bill equal with an original at law. They petition four times in several particulars. This deed was produced at last; how it has been concealed, she knows not. Her concern is, she brought 18,000*l.*, and he made a settlement for her jointure. The jointure is but 450*l.* a year; the contest is about 100*l.* a year. There was a jointure deed beyond dispute. The operation of the deed is all. There is proof that upon his death bed he intended it. Offers to read the evidence proving the death bed declaration. Reading opposed, as being before the Master in Chancery; Argued *pro* and *con*. Decree of reference read. Counsel withdraw. After debate; *Question*, Whether the evidence offered at the Bar for proving Sir Richard's intention upon his death bed shall be read? Contents 26, Not Contents 24, Tellers. E. Feversham and E. Bath. The hearing being then interrupted by a message from the Commons, counsel were afterwards called in again. Deposition of Mary Masters read. 4 Inter. She says that a little before his death she heard him say that he would give all his estate to his wife in Sussex. Deposition of Mary Roman read. 7 Inter. That if he had 1,000*l.* a year more, his wife should have it, and that he had given her all his estate in Sussex. *Attorney-General* (for Respondents): They submit that of 1675 to be a deed; so, if this deed stand, she will have all the land. By the latter deed of 1678 she is jointured in Shripney farm. The last is a voluntary deed. If the first were only to stand for a time till another was made. We say it was the intent of all the parties that the last deed should stand for her jointure. All parties are witnesses of it. In his life-time he never discourses of it. We have from Lady Ashfield all the circumstances [to show] that this was her jointure, and she consented. *Sir Charles Porter* (for Respondents): I believe there was such a settlement, but he had it in his power. She says in her Answer that she knows not of the deed, only that she had seen such a one in Mr. Denton's hand. We were nonsuited upon a trick of their having alienated the land. Going abroad in her coach, the deed was thrown into her coach. This is a very odd thing, Mr. Hoare being a very wary man in business and a trustee. Counsel for Appellants having replied, the *L. Privy Seal* stated the case, and, after debate, the Decree was reversed and the jointure of 1675 confirmed to Lady Ashfield. MS. Min. L. J., XIV. 290.)]

Annexed:—

- (a.) 18 July. Answer of Richard Ashfield, Esq., and of Anne Ashfield, Spinster.—Sir Richard Ashfield, on his marriage with his first wife, Mary, one of the daughters, and co-heirs of Sir Richard Rogers (with whom he had an estate of inheritance of about £700 a year, subject to a jointure to Lady Mary Rogers, Sir Richard's widow, of about £300 a year), settled on her certain lands in East Acton, in Middlesex, of about £300 a year, for her jointure. Wanting money in 1653 he prevailed on Respondent's mother to join with him in the sale of those jointure lands, and in consideration thereof entered into the bond of £4,000. After the death of Respondents' father, his widow and executrix, the second Lady Ashfield, combined with Sir John, Respondent's elder brother, who had married her sister, to defeat Respondents of their portions provided for by the bond and will. Respondents commenced an action at law upon the bond, but were advised to suffer a nonsuit, being surprised by an alleged deed of conveyance of 1686 from Sir John to Lady Ashfield, then produced. Lady Ashfield being decreed by the Court of Chancery to account, pretended to have found, thrown into a coach, another jointure

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deed of 1675, settling on her for life all the lands in Sussex, and obtained a rehearing on 30 May last, when the Court was satisfied that the alleged conveyance of 1686 was a mere contrivance, and that the lands of South Berksted, found by the verdict of the jury to descend to Sir John Ashfield, were not intended, either by the deed of 1675 or that of 1678, to be settled on the Appellant in jointure, and decreed that she should have only the jointure settled by the deed of 1678, on the ground that, after the settlement of 1675, she had joined in the sale of the lands in Northberksted by a fine with her husband, which was made a consideration in the deed of 1678. This decree is just and equitable. Pray that the appeal may be dismissed. *Signed* by Respondents and *countersigned*, Cha. Porter. *Endorsed* as brought in this day.

- (b.) 5 Dec. Petition of Respondents. Their Lordships on the 23rd July, ordered that the Appellant should have the benefit of her whole jointure by the deed of 1675, and that the same should be confirmed. But as the order is drawn, their Lordships have not only confirmed that deed, but reversed the decrees in Chancery generally, whereas by those decrees the personal estate of Sir Richard Ashfield, and the Northberksted lands, which were no part of the settlement of 1675, are liable to Petitioners' demands, touching which the Appellant sought no relief. Pray that their Lordships will explain their order, and declare that Respondents may have the benefit of the deed of 1675 as to Northberksted, and be at liberty to proceed in Chancery against all the personal estate of Sir Richard, their father, in satisfaction of their bond and charges. *Signed* by Respondent, and *countersigned* by Sir Charles Porter. L. J., XIV. 361.
- (c.) 12 Dec. Petition of Appellant, in answer to preceding. The Respondents, the day after passing their Lordships' judgment, petitioned their Lordships for alterations, and that they might have the profits till that time of the Appellants' jointure lands, which they call the personal estate, which Petition their Lordships then rejected. They now pray to be allowed to proceed in Chancery as to Sir Richard's personal estate, which their Lordships judgment does not obstruct, nothing as to the personal estate being comprised in that judgment, unless Respondents pretend, as before, the profits of Appellants' jointure lands to be such. Respondents, in praying to have the benefit of the Northberksted lands, really pray for a reversal of the Judgment, since the manor and farm of Shipney, expressly settled on Respondents by that Judgment, extends into the vill and town, though not the manor of Northberksted, which manor only was settled for Appellants' benefit. Pray that their Lordships, having so lately in the case of Lady Turner,* determined their Judgments to be final and conclusive to all parts, as formerly they have been, will dismiss the Appellants' petition. *Signed* by Petitioner, and *countersigned* Ja. Selby. L. J., XIV. 369. [This and the preceding petition were read this day, together with the Petition of Appeal; the Judgment of the 23rd July thereupon was read twice, and a question proposed, whether when the House has reversed a decree, it is a bar to them in Chancery? The *L. C. Justice* stated that if it was in the decree, it did shut them out of relief

* *Turner v. Turner.* L. J., XIV. 358 (2 Dec. 1689).

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in Chancery. *Lechmere*, B., was then heard, and after debate, on question, whether the Petitioners, Richard and Anne Ashfield, shall be heard as to their explanation of the order *which has given more than the Petitioners desired*,* it was resolved in the Affirmative. (MS. Min. 12 Dec.)—On the 21st, Counsel being called in, *Sir Charles Porter* opened the case for the petitioning Respondents. The lady set forth a deed of jointure in 1678. As to the deed of 1675 we will not stir. The Court below will not stir. We desire your Lordships will explain it to go no further than she desired in her Petition. We desire to proceed on the decrees below upon all but what is settled on the lady's jointure. *Mr. Conyers* on the same side. *Mr. Finch* (for Appellant): What they desire is only to have a rehearing. There are four decrees. The Court decrees the real and personal estate; the first decree takes account of the personal estate. When we came back to the verdict, we said: Take your verdict. They say, we must have an account of the profits of those lands. There are two decrees settling the manner of the conveyance. We complain of those decrees in our petition, and we desire no more. Three decrees affect that jointure. We do not at all touch the first decree. We desire to have the benefit of the deed of 1675. *Mr. Selby* (for Appellant): The order ought to be confirmed. The decrees we have appealed from are described in the Petition; as to the others, they are open. After a reply, the Counsel agreed on the words afterwards added by the House in their order, as in L. J., XIV. 290, 395. (MS. Min. 21 Dec.)]

114. July 10. Sherley's Estate Act.—Draft of an Act for enabling Hannah Sherley, Widow, and Mary Battilhey *alias* Sherley, her daughter, to settle and dispose of certain lands and tenements in the county (*sic*) of Middlesex and Essex. [Read 1^a this day: Royal assent 20 August. L. J., XIV. 272, 318. 1 W. & M. cap. 56 in Long Calendar.]

115. July 11. Writ of Summons (L. Berkley de Berkley).—Writ of Summons, dated this day, to Charles Berkley de Berkely, Chr., introduced this day. L. J., XIV. 274.

116. July 11. Writ of Summons (L. Sydney).—Writ of Summons, dated this day, to Robert Sydney, of Penshurst, Chr., introduced this day. L. J., XIV. 274.

117. July 12. Writ of Summons (Bp. Bangor).—Writ of Summons, dated 11 July, to Humphrey [Humphreys], Bp. of Bangor, who took the Oaths this day. L. J., XIV. 275.

118. July 12. Sir Adam Blair, Capt. Vaughan and others (Impeachment).—Answer of Captain Henry Vaughan, now Prisoner in Newgate, to the Articles of Impeachment of High Treason, etc. Signed Henry Vaughan. L. J., XIV. 275. *In extenso*. [The Articles of Impeachment were brought from the Commons on 26 June, when the Lords appointed a Committee to search for precedents as to the method of receiving Impeachments (L. J., XIV. 254), who reported on the 27th (*ib.* 255; Com. Book 26 June).—On the 29th an order of 19 Dec. 1660 was read, for referring it to the Attorney-General to

* The words in italics are struck out, MS. Min.

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prosecute (MS. Min. 29 June), and the House appointed another Committee to search for precedents, with grounds and reasons (L. J., XIV. 260). This Committee (E. Rochester in the Chair), after considering the precedents set out in their Report (L. J., XIV. 263. *In extenso*) down to the case of Sir Robert Berkley, applied for directions as to whether they were to examine precedents of misdemeanour, as well as of High Treason, and were directed by the House in the affirmative (Com. Book 1 July: No entry of this in L. J.). They reported on 2 July (L. J., XIV. 262), when the proceedings are thus recorded in the MS. Min. "A statute read by the clerk. After debate, *Turton, B.*, reads the Record 4 Edw. III. No. 2 in French. Judges asked, Whether this Record or Statute, of which this is an authentic copy, is now in force? *Holt, C. J.*, heard: Whether it be entered on the Roll or by agreement with the King, I must look on the Roll. *Pollexfen, C. J.*: If this is amongst the Records or Rolls, signed *Le Roy le veult*, it is a Record. I must see it. *Atkyns, C. B.*: It is an Act of Parliament this, enacted by the Lords and great men of the realm, yet this is an Act, and the Commons may be under the name of 'great men.' It is a [*illegible*] of the Lords only, yet determined by the King, Lords, and Commons. *L. Coke* treats of it as an Act. 'In Pleno Parlamento,' *Mr. Selden* of that opinion. *Dolben, J.*: I think it is an Act, on the same grounds that the Chief Baron said it was. *Nevill, J.*: Here are judgments against many by the House of Peers, and then it is taken notice of by the King, etc. To say it is an Act, I believe it is; but I cannot say it is unless I see the Roll. *Gregory, J.*: In former times Acts were not so formal as now in words. In the printed Statutes of that time it is said, 'By the Advice, etc. of the King, Lords, and Commons,' yet in the Acts it is seldom so. To me it appears to be an Act. *Mr. Rokeby, J.*: I cannot give a full judgment on it without seeing matter of fact. This is amongst judgment, and probable, but not having seen the Roll, I cannot be positive. *Turton, B.*: It seems to me to be an Act. I should have been glad to have seen the Roll. I cannot be positive." After debate; Question proposed to be put to the Judges; Whether the Lords by this Statute be barred from trying a Commoner upon an Impeachment of the House of Commons? Then the previous question resolved in the negative. Contents 37: Proxies 7; in all, 44. Not-Contents 37: Proxies 10; in all, 47. Tellers. E. Northampton and E. Manchester. Then after debate, *Proposed* That an Address be made to the King for a Commission of Oyer and Terminer. Question, Whether to proceed on the impeachment, etc. (L. J. *ib.*): Resolved in the Affirmative. Contents 37: Proxies 7; in all, 44. Not Contents 33; Proxies 10; in all, 43. Tellers. E. Scarsdale and E. Stamford. (MS. Min. 2 July. L. J., XIV. 264.)—On 4 July Vaughan, Mole, and Elliot were brought to the Bar, and allowed time to answer, and committed to Newgate, with leave to see their friends (L. J., XIV. 267.)]

Annexed:—

- (a.) 12 July.—Answer of Captain Frederick Mole, now Prisoner in Newgate, to same. *Signed* Frederick Mole. L. J., XIV. 275. *In extenso*.
- (b.) 12 July.—Answer of John Elliott, Doctor in Physic, now Prisoner in Newgate, to same. *Signed* John Elliott. L. J., XIV. 275. *In extenso*.
- (c.) 12 July. List of persons who have had access to Vaughan, Mole, and Elliott. Returned by W. Richardson, pursuant to Order of the 4th inst. L. J., XIV., 267.

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- (d.) 22 July.—Answer of Sir Adam Blair, now prisoner in the Gatehouse, to Commons' impeachment. *Signed* Ad. Blair. L. J., XIV., 289. *In extenso.*
- (e.) 22 July.—Answer of Robert Gray, Doctor in Physic, now prisoner in the Gatehouse, to same. *Signed* Robert Gray. L. J., XIV., 289. *In extenso.*
- (f.) 22 July.—List of persons who have had access to Sir Adam Blair and Dr. Robert Gray. Returned pursuant to Order of the House. *Signed* Anth. Church, Keeper. *Endorsed* as brought in this day.
- (g.) 14 August.—Petition of Capt. Vaughan, Capt. Mole,* and Dr. Elliott, now Prisoners in Newgate. Petitioners are strictly confined to close rooms, without the benefit of the air; whereby their health suffers, and if continued this hot season, they will lose their lives. Pray to have the benefit of the Press Yard. *Signed* by Petitioners. L. J., XIV. 311.
- (h.) 31 March 1690.—Petition of Sir Adam Blair, now Prisoner in the Gatehouse, Westminster. Petitioner, though he has answered the Articles of Impeachment, has been kept in prison nine months without further prosecution, to the great damage of his estate and health, as appears by a certificate annexed. Prays to be released on Bail. *Signed* Ad. Blair. [Read this day and referred to the Committee for Privileges. L. J., XIV. 444. Nothing is recorded in Priv. Book.]
- (i.) Certificate by Jo. Windebank and Joh. Bateman, dated 28 March 1690, that Sir Adam has been suffering for three months from rheumatism. [Appended to preceding.]
- (h.) 31 March 1690. Order referring Sir Adam's Petition (Annex h) to the Committee for Privileges. L. J., XIV. 444. *In extenso.*
- (l.) 7 April 1690. Petition of Dr. Robert Gray, now Prisoner in the Gatehouse, Westminster. Petitioner has been in prison for almost nine months, to the great damage of his health and state. Prays to be discharged, on giving bail to attend when commanded. *Signed* Robert Gray. L. J., XIV. 453, 454.
- (m.) 8 April 1690. Petition of Capt. Henry Vaughan, now Prisoner in Newgate, to same effect as preceding. *Signed* Henry Vaughan. L. J., XIV. 454, 456.
- (n.) 8 April 1690. Petition of Mole and Elliott, now prisoners in Newgate, to same effect as preceding. *Signed* by Petitioners. L. J., XIV. 454, 456.
- (o.) 2 Dec. 1690. Petition of Sir Adam Blair, praying the House to discharge him and his bail, so that he may be at liberty to go to Scotland to take care of his family and that part of his small fortune which yet remains preserved. L. J., XIV. 575.
- (p.) 3 Dec. 1690. Petition of Captain Frederick Mole. Petitioner was admitted to bail in April last, but is destitute of all manner of subsistence in this country, being a stranger, born at Antwerp and a natural born subject of the King of Spain. Prays to be discharged from his bail, that he may return to his native country. L. J., XIV. 576.
- (q.) 5 Dec. 1690. Petition of John Elliott, Doctor in Physic, praying to be discharged of his bail. L. J., XIV. 580.

* He signs here as F. Moulde, and as F. Moll in Annex (p.).

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(r.) 5 Dec. 1690. Similar Petition of Henry Vaughan. L. J., XIV. 580.

(s.) 5 Dec. 1690. Similar Petition of Robert Gray. L. J., XIV. 580.

119. July 13. Lady Gerard of Brandon v. E. Macclesfield (Privilege).—Petition of Ann Gerard, wife of the Right Hon. Charles Gerard, commonly called Lord Brandon. On Petitioner's marriage with Charles Lord Brandon, son of E. Macclesfield, the Earl, on consideration of Sir Richard Mason, Petitioner's father, paying him 2,000*l.*, and settling on Lord Brandon and Petitioner, with divers remainders over to others, the manor of Bishop's Castle and other lands in Shropshire of the value of 10,000*l.*, covenanted to suffer a recovery of the manors of Gasworth or Gosworth, Besselley, Siddenton, Alford or Oldford, Wimblesloe or Winsloe, Wisterfield or Westerfield, Hassall and Down Holland, and other lands in Cheshire and Lancashire, to the use that Lord Brandon and Petitioner might have a yearly rentcharge of 1,000*l.* The Earl has failed to suffer or procure the recovery, and Petitioner fears she will lose her intended jointure, if he dies before doing so. Prays leave to proceed against the Earl, notwithstanding his privilege, for an execution of the settlement. *Signed* Anne Brandon. *Endorsed.* Read 13 July; Nothing done on it. [Offered to be read 12 July, and ordered to be read this day, and E. Macclesfield to have notice of it. (MS. Min.) The matter was left to the Earl of Macclesfield, who was heard on it this day. L. J., XIV. 279. MS. Min. of date.]

Annexed:—

(a.) 16 July.—Petition of same. Repeats contents of preceding Petition, and adds that the Earl had stated in the House, when Petitioner's last Petition was read, that the lands settled by Petitioner's father were not of the value agreed upon, and that Petitioner's mother had sold a farm which had been agreed to be settled as collateral security. Petitioner and her trustees are ready to give full effect to the marriage settlement, if the Earl and his trustees will do likewise. Lord Brandon empowered Petitioner's mother to receive the profits of the said farm, but the power of attorney being revocable, Petitioner's mother cannot reap the benefit intended. Prays leave to proceed against the Earl. *Signed*, Anne Brandon. *Endorsed*: Nothing done in it [MS. Min. 16 July. No entry in L. J.]

120. July 16. Militia Bill.—Commons' Amended * Engrossment of An additional Act for the *better* ordering the forces in the several counties in this kingdom.

ENGROSSED BILL.

Clause 1.

For the better ordering of the forces in the several counties and places of England, Dominion of Wales, and town of Berwick-upon-Tweed, Be it enacted by the King and Queen's Most Excellent Majesties.

ACT OF 1662 (14 Car. II. c. 3).

Line.†

Sect. 1.

1 Forasmuch as quiet thereof, Be it therefore declared and enacted, by the King's Most Excellent Majesty.

* The Amendments made at various stages are shown in the usual manner, vizt., omissions by square brackets and additions by italics. They are described, where necessary, in the notes to the text where they occur.

† The references are to the lines in the Folio Edition of the Statutes.

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. . . That their Majesties shall and may.

. . . Berwick-upon-Tweed, [so as no person be Lieutenant for above two Counties or Ridings at the same time,]* which Lieutenants.

. . . repelling of invasions, by killing or slaying in case of opposition, as may happen.

. . . present to their Majesties† the names of such person and persons as they shall think fit to be Deputy Lieutenants, usually residing in the respective Counties and Ridings, and upon their Majesties' approbation of them, shall give them deputations accordingly; And that the said Lieutenants respectively, and in their absence, or otherwise by their directions, the said Deputy Lieutenants, or any two.

persons so armed declared‡

Clause 2.

. . . major part of such [Lieutenants or]§ Deputy Lieutenants.

. . . to charge any [man] *person or persons* with.

Concludes with second paragraph of Sect. 3 of Act of 1662, viz^t, "And it shall be lawful . . . this kingdom."

Clause 3.||

. . . to contribute towards finding any horse and horseman with arms; nor shall any person who hath an estate of 200*l*. per annum in lands, tenements or hereditaments, or personal estate of the value of 2,400*l*., be compellable to find or contribute toward any foot-soldier or arms; and the said.

Line.

11 . . . That the King's Most Excellent Majesty, his heirs and successors, shall and may.

14 . . . Berwick-upon-Tweed, which Lieutenants.

20 . . . repelling of invasions, as may happen.

24 . . . present to his Majesty, his heirs and successors, the names of such person and persons as they shall think fit to be Deputy Lieutenants, and upon his Majesty's approbation of them, shall give them deputations accordingly; always understood, that his Majesty, his heirs and successors, have power and authority to direct and order otherwise; and accordingly, at his and their pleasure may appoint and commissionate or displace such officers, anything in this Act to the contrary notwithstanding; And that the said Lieutenants respectively, and in their absence out of the precincts and limits of their respective Lieutenancies, or otherwise by their directions, the said Deputy Lieutenants during their said respective deputations, or any two.

32 . . . persons so to be armed . . . declared.

Sect. 2.

4 . . . major part of such Lieutenants and Deputy Lieutenants.

7 . . . to charge any person with.

Sect. 4.

2 . . . to contribute in finding any horse and horseman with arms; and the said.

* These words were retained in Committee by 7 to 6 (Com. Book, 23 July), and appear to have been left out on Report.

† The Engrossment here has some words erased, no doubt "their heirs and successors." The erasure recurs in the portion of the text corresponding with Sect. 32, line 3 of the Act of 1662.

‡ A proviso, which is wanting, was here offered in Committee by V. Newport, but rejected by 8 to 4. (Com. Book 23 July.)

§ These words were left out in Committee, but reinstated on Report. The amendment to omit them is struck through in Annex (a) below.

|| The Com. Book (23 July) here has the following: "On question, whether the Proviso (Sect. 4) in the Act 13 & 14 Car. II. c. 3 shall be added to the Bill at the end of this clause, it was resolved by 8 to 4 in the negative."

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Clause 4.

. . . two shillings sixpence by the day to the troopers.

Clause 5.

And for furnishing ammunition, *field-pieces carrying three pound bullets, if it be thought convenient,** and other necessities.

. . . charged by Act made in the twelfth year of King Charles the Second, intituled.

. . . Lieutenants [and] or† Deputies, or any three or more of them.

Clause 6.

And be it further enacted, That the said Lieutenants [and] or† their Deputies, or any two of them, or other chief officer of the place constituted by virtue of this Act in the respective counties, precincts and places as aforesaid, may charge carts.

. . . and other warlike provision, allowing eight pence a mile.

. . . out of wagons or carts for uses aforesaid, one penny, which said carts, wagons, wains, and horses shall be so taken upon the marching, and for the use of militia regiments, companies, or troops raised by virtue of this Act, upon occasion of invasion, insurrection, or rebellion, and not for any other regiments, companies, or troops not so raised; And that there shall not be more than two wagons, carts, or wains, or in lieu thereof, not exceeding twenty horses out of wagons or carts charged for any one regiment, which shall not be employed for longer time than one day at one time; And that the said Lieutenants or Deputies . . . such soldiers that do not their duties.

. . . mulct not exceeding twenty shillings.

Clause 7.

. . . furniture or foot-arms charged upon him or them, or to pay such sum or sums of money as he or they are or shall be charged at by virtue of this Act towards the providing.

. . . persons (if horse) not exceeding 20*l.*, if foot, not exceeding 5*l.*, and to levy the same by warrant under their or any three or more of their hands and seals by distress . . . rendering the overplus to the person so distrained, all

Line.

Sect. 5.

3 . . . two shillings by the day to the troopers.

Sect. 6.

1 And for furnishing ammunition and other necessities.

4 . . . now or late charged by an Act intituled.

11 . . . Lieutenants, and,† in their absence as aforesaid, or otherwise by their directions, by their deputies or any two or more of them.

Sect. 7.

1 And be it enacted, That the said Lieutenants and their Deputies, or the chief officers upon the place in their respective counties and places as aforesaid, may charge carts.

3 . . . and other materials, allowing sixpence a mile.

4 . . . out of wagon or cart for the uses aforesaid, one penny, so taken upon the marching of any regiment, company, or troop, upon occasion of invasion, insurrection, or rebellion; And that the said Lieutenants or Deputies . . . such soldiers as do not their duties.

9 . . . mulct not exceeding five shillings.

Sect. 8.

3 . . . furniture, or to pay such sum or sums of money towards the providing.

6 . . . persons, not exceeding 20*l.*, and also by warrant under their or any three or more of their hands and seals to levy such sum or sums of money, or the value of such horse or horses, arms and furniture, and

* These words, in Press 4, line 22, were added in Committee on recommitment. (Com. Book, 5 Aug.)

† Amendment made in Committee and disagreed to on Report.

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necessary charge in levying thereof first deducted, and the same to be employed.	Line.	such penalty inflicted, by distress rendering the overplus to the party so distrained, all necessary charge in levying thereof being first deducted; And it is declared, that the same be employed.
Clause 8.		Sect. 9.
. . . Lieutenants [and] <i>or in his (sic) absence,*</i> Deputies.	3	. . . Lieutenants, and in their absence as aforesaid, or otherwise by their directions, to and for their Deputies.
. . . Lieutenants [and] <i>or in his (sic) absence,*</i> Deputies.	8	. . . Ditto.
. . . penalty not exceeding (if horse) 5 <i>l.</i> , if foot 40 <i>s.</i> , to be levied.	15	. . . penalty not exceeding 5 <i>l.</i> , to be levied.
. . . so refusing or neglecting.	16	. . . so refusing.
. . . distrained, all necessary charges deducted.	16	. . . distrained, necessary charges deducted.
Clause 9.		Sect. 10.
. . . judge convenient.	3	. . . judge necessary or convenient.
Clause 10.		Sect. 11.
. . . disbursements, the said Treasurer.	3	. . . disbursements thereof, the said Treasurer.
. . . upon oath, to the said Lieutenants [and] <i>or in his (sic) absence,*</i> their Deputies.	4	. . . upon oath, to the said Lieutenants and their Deputies.
. . . General Quarter-Sessions, [who are to examine and except against the said Account, if they shall see cause.†]	8	. . . General Quarter-Sessions.
Clause 11.		Sect. 12.
Clause 12.		Sect. 15.
. . . horses and [horseman] <i>horsemen</i> .	2	. . . horses and horsemen.
. . . Lieutenants [and] <i>or</i> Deputies.‡	4	. . . Lieutenants and Deputies.
Clause 13.		Sect. 16.
. . . or shall be levied.	4	. . . or shall pay or be levied.
. . . three months after such levying.	8	. . . two months after such levying.
. . . Lieutenants [and] <i>or</i> § Deputies as aforesaid.	8	. . . respective Lieutenants, and in their absence as aforesaid, or otherwise by their directions, before their Deputies.

* The Amendment made in Committee was simply to substitute here as elsewhere ("or") for ("and"). The House, on Report, agreed to the amendment in this case, with the addition of the words ("*in his absence*").

† These words were left out in Committee (Com. Book, 23 July), but reinstated on Report (MS. Min., 2 Aug.).

‡ The Committee, after making this amendment, ordered to report that wherever in the Bill is "Lieutenant and Deputies" it may be "Lieutenant or Deputies" (Com. Book, 24 July). The amendment, accordingly, recurs consequentially, as, well here and in the other places noted in the text, as in other portions of the Bill, corresponding with § ii., ll. 4 and 12; § iii., l. 4; § iv., l. 3; § vi., ll. 7 and 11; § viii., ll. 1 and 5; § xv., l. 10; and § xxxii., l. 15 of the Act of 1662; and § iv., ll. 1 and 5; § v., l. 4; § xiii., ll. 3 and 6; § xvii., ll. 4 and 7; § xx., l. 5; and § xxi., ll. 5 and 8 of the Act of 1663. The amendment was disagreed to on Report (MS. Min., 2 Aug.).

§ Amendment made in Committee, and disagreed to on Report.

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Clause 14, where differing from Sect. 20 of the Act of 1662, reads as follows:—And that such single Companies and Troops shall not at any one time be continued in exercise above the space of three days; And that at a general muster and exercise of regiments, no officer or soldier shall be constrained to stay for above six days together [from their respective habitations] *in exercise*; And that at every such muster and exercise every musketeer shall bring with him half a pound of powder and three yards of match (if a matchlock), and every horseman [a quarter of] *half** a pound of powder and bullets proportionable, at the charge of such person or persons as provide the said horseman or foot-soldier. And the arms, offensive and defensive, with the furniture for horse, are to be as followeth: The defensive arms, a Back, Breast and Pot, to be pistol proof; the offensive arms, a sword, a case of pistols, a carbine with belt and swivel, the barrels of the pistols not to be under twelve inches in length; the furniture for the horse to be a great saddle or pad with burrs, a bit and bridle, with a pectoral and crupper; for the foot, each musketeer to have a musquet, the barrel whereof not under three foot and two inches in length; the gauge of the bore to be twelve bullets to the pound, with a sufficient cartridge-box or bandileers, which may contain twelve bullets at least, with a sword; a pikeman's arms, a pike made of ash not under fifteen foot in length, the head and foot included, and sword; And every horseman to have a cloak and each footman a coat of such colour as shall be appointed by the Lord Lieutenants or Deputy Lieutenants or any three or more of them, which colour so appointed shall not be altered by the same or any other Lord Lieutenant or Deputys.

Clause 15 (Compare Sect. 24 of Act of 1662) reads as follows:—

Provided always, and it is hereby further Enacted and Declared, that no person charged with the finding of horse or contributing thereunto, as aforesaid, shall be compellable to serve in his or their own person, but may, according to such proportion as they are or shall be respectively charged by this Act, find one or more fit or sufficient man or men, to be approved of by the Lord Lieutenant [and] *or, in his absence, by the†* Deputy Lieutenants, or any two or more of them; And in case any person charged with the finding one or more foot-soldier or soldiers shall refuse to serve in person in his or their arms, that then it shall and may be lawful for the Lord Lieutenant or any two or more of his deputies by warrant under his or their hands and seals to charge the constable or tythingman, together with any two or more of the most substantial inhabitants of the place where such refusal shall be, to bring in a List of the Christian and Surnames of such persons as are inhabitants and able to bear arms within their Liberty, out of which the said Lord Lieutenants [and] *or‡* Deputy Lieutenants, or any three or more of them, shall make choice of one or more, as occasion in that case shall require, to serve with such arms; and the person so made choice of, is hereby required from time to time to appear and serve upon summons under the like penalties as by this Act in the like cases of default is provided.

* Amendment made in Committee, and disagreed to on Report.

† The amendment made in Committee was simply to substitute here as elsewhere ("or") for ("and"). (Com. Book, 24 July.) The House, on Report, agreed to the amendment in this case, with the addition of the words ("in his absence by the").

‡ This Amendment of the Committee is found on the fair copy of Amendments (Annex (b) below), and therefore appears to have been agreed to on Report.

Clause 16.
 . . . or any two or more.
 . . . conducting such number.

Line. Sect. 21.
 3 . . . or any three or more.
 4 . . . conducting of such number.

Clause 17 :—Provided always that neither the Militia of the County and Island of Anglesea nor any part thereof shall be compelled to march out of the said County or Island, but shall remain there for the defence of the same, anything herein contained to the contrary notwithstanding.

Clause 18.
 . . . County (*sic*) of Devon and Cornwall.
 . . . said [County] *Counties** as hath been.

Line. Sect. 25.
 2 . . . Counties of Devon and Cornwall.
 6 . . . said Counties, and either of them, as hath been.

Clause 19.
 . . . forces of the said City have of late.

. . . preventing insurrections.
 . . . needful for the necessary charge of.

Sect. 26.
 5 . . . forces of the said City, that now are and formerly were raised in order to his Majesty's happy restoration, have of late.
 6 . . . preventing of insurrections.
 8 . . . needful for defraying the arrears of those first raised for his Majesty's happy Restoration, and the arrears and necessary charge of.

Clause 20.

Sect. 27.

Clause 21.
 . . . horses and arms.

Sect. 28.
 2 . . . horses or arms.

Clause 22.

Sect. 29.

Clause 23.
 . . . quality of persons, as was anciently used and accustomed, anything . . . notwithstanding.†

Sect. 30.
 6 . . . quality of persons, as was observed in forming the present forces thereof, anything . . . notwithstanding.

Clause [24] 25.

Sect. 31.

Clause [25] 26.‡
 . . . than is hereafter expressed.
 . . . imprisonment of any peer.

Sect. 32.
 2 . . . than is hereinafter expressed.
 10 . . . imprisonment of the person of any peer.
 19 . . . and if a tenant§ of any peer.

Clause [26] 27 :—And be it further enacted, That the captain of every troop or company respectively, *as well as the muster-masters*, shall, at every meeting of the said troop or company, take an exact view of all the arms in his troop or company, to see if they be fixed and in good order, pursuant to this Act; and where he finds any defect that cannot be amended at that meeting, that he give command to such soldiers to have the said defect remedied against next meeting, upon pain of punishment of such soldiers as this Act directs.

* The Engrossment here has some words, probably "and either of them," erased.

† Here the Committee added the Proviso, marked †, given in Annex (c) below, which was agreed to on Report.

‡ At the end of this clause the Committee added a Proviso, A, which is wanting (Com. Book, 27 July). It was no doubt disagreed to on Report, not being in the fair copy of Amendments in Annex (b).

§ The Engrossment here has some words erased.

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ENGROSSED BILL.

ACT OF 1663 (15 Car. II. c. 4).

1689.

Clause [27] 28.

And it is hereby further provided and enacted, That every Commissioned horse and foot officer in the trained bands of this Kingdom (settled according to this Act), *except Lieutenants, Deputy Lieutenants, Colonels, Lieutenant-Colonels, Majors, and Captains*, shall be and is hereby exempted and excluded from finding or contributing towards any horse, horseman, or arms, or foot-soldiers and arms for his or their whole estate *in that County* in respect of the necessary expenses which the said employment doth engage him or them, anything in this Act to the contrary notwithstanding.

Clause [28] 29.

. . . so many foot-arms.

Clause [29] 30.

. . . such sufficient arms aforesaid.

. . . to deduct so much as shall be charged upon the landlord's rent payable to the landlords (except such landlord be charged with the finding of horse in the same county, in which case the tenants of every such landlord are discharged hereby for *(sic)* finding of foot for such part of their estates, as they pay a full yearly value to any such landlord), and in default hereof the goods of every such tenant is *(sic)* also liable to be distrained and sold in manner aforesaid.*

Clause [30] 32 :—Provided nevertheless, and be it further enacted and declared, That it shall and may be lawful to and for the said Lieutenants or their Deputies, or any three or more of them, for this present year only, to commence from the 24th day of July 1689, to keep the said militia or trained bands together at their first general muster not exceeding twelve days, to the intent the said militia may be perfectly exercised and made fit for the service of this Kingdom, anything in this Act to the contrary in any wise notwithstanding.

Clause [31] 33.

And be it further enacted by the authority aforesaid, That the said respective Lieutenants . . . shall seem expedient.

Line.

Sect. 10.

Provided always, &c., That every commissioned foot-officer in the train bands or militia of this Kingdom (settled according to Act of Parliament), shall be and is hereby exempted and excused from finding and contributing towards the finding any horse, horseman, or arms, or foot-soldier and arms, for his whole estate, if at any time it is charged but with one horse, or a less charge, or for such part of his estate as is or shall be charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he so serves as a foot-officer, in respect of the expense which the said employment doth necessarily engage him in, anything in the said Acts to the contrary notwithstanding.

Sect. 4.

5 . . . so many sufficient foot-arms.

Sect. 5.

5 . . . such sufficient arms as aforesaid.

10 . . . to deduct so much as shall be charged upon the landlord's rent, out of the next rent payable to the landlord; and in default hereof the goods of every such tenant is *(sic)* also liable to be distrained and sold in manner aforesaid.

Line.

Sect. 13.

1 And whereas the fourth part of one month's assessment in each county, after the rate of 70,000*l.* by the month, is by the said Act yearly appointed for furnishing ammunition and other necessities; Be it enacted and declared by the authority aforesaid, that the said respective Lieutenants . . . shall seem expedient.

* Here the Committee added the Proviso B, given in Annex (d) below, which was agreed to on Report.

Clause [32] 34.
 . . . in execution of this Act.

Line. . . . Sect. 14.
 2 . . . in execution of this or the
 said Act.

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Clause [33] 35.
 . . . execution of this Act.

Sect. 15.
 2 . . . execution of this or the said
 Act.

Clause [34] 36.
 . . . cannot be found and had.

Sect. 17.
 6 . . . cannot be found or had.

Clause [35] 37.
 . . . granted by this Act.

Sect. 20.
 3 . . . granted by this and the
 said former Act.

Clause [36] 38.
 . . . according to this present Act.

Sect. 21.
 4 . . . according to the said men-
 tioned Act and this present Act.

Clause [37] 39:—Provided always and be it enacted, That if any officer of a troop, company, or regiment of horse or foot shall, after the 24th day of July 1689, impose the charge of finding any horse or foot-arms upon any person or persons not charged by the respective Lieutenants or Deputy Lieutenants, according to the limitations, rates and directions of this Act, every such officer shall forfeit the sum of 5*l*. for every such offence to the person so unduly charged, to be recovered by action, bill, plaint or information in any of their Majesties' Courts of Record at Westminster, wherein no essoign, protection or wager of law shall be allowed, nor any more than one imparlance.

Clause [38] 40:—Provided always and be it further enacted, That where any Papist or reputed Papist, by virtue of his estate is or ought to be charged to the finding of horse or foot, that in such case the *respective Lieutenants and** Deputy Lieutenants, or any three or more of them for the respective County or place where such charge is or ought to be, shall appoint some other person to provide a sufficient horse and horseman or a sufficient footman; and that the said Papist or reputed Papist shall pay to such person so appointed the sum of 10*l*. for every horse and horseman yearly, and for every footman the sum of 50*s*. yearly, and so rateably for a greater or less proportion where-with he or she shall be charged, to be paid quarterly by equal proportions, the allowances before-mentioned to be understood over and besides the charges of finding arms, cloaks and coats and other furniture for horse and foot, which are to be found by such Papist or reputed Papist, but to be kept by such person as shall be so appointed; and in case he or she is joined with any Protestant charged to bear arms, then the horse, horseman and arms and the footman and arms shall be kept by such Protestant with whom he or she shall be charged, and such Papist or reputed Papist shall make allowance proportionable to the estate for which he or she is or shall be respectively charged; and in default of payment of the sum or sums of money so appointed to be paid by the said Papist or reputed Papist, the same shall and may be levied by distress by warrant under *the hand and seal of the Lieutenant and** *under the hands and seals of three or more Deputy Lieutenants* for the respective county or place where the said arms are to be provided, rendering the overplus to the party.

* The Amendment made in Committee had "or" instead of "and" (Com. Book, 27 July). It was altered as above on Report.

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Clause [39] 41 :—And it is hereby further enacted, That he or she shall be adjudged a Papist or reputed Papist to the purpose aforesaid, who shall refuse to make and subscribe the Declaration mentioned in an Act made in the 30th year of the reign of King Charles II., intituled An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament, or who, being summoned by order from any *Lieutenant and** three or more Deputy Lieutenants for the county or place where he or she shall inhabit *or have an estate*,† shall, without reasonable impediment or excuse (of which the said *Lieutenant and** Deputy Lieutenants, or any three of them respectively shall have power to judge and determine), refuse or neglect to appear before the said *Lieutenant and* Deputy Lieutenants accordingly; And also that every Lieutenant [and] or ‡ Deputy Lieutenant shall, within their respective jurisdictions, have power to tender the said Declaration.

Clause [40] 42 :—Provided always and be it further enacted, That every soldier who shall at any time be dismissed in fewer days than are mentioned in the warrant by virtue of which he last appeared upon duty, shall repay unto such person from whom he received the several days' pay in the said warrant mentioned, the overplus of the moneys so by him received, and in case of refusal or neglect of payment as aforesaid, it shall and may be lawful for *the Lieutenant and** any two or more Deputy Lieutenants for that County or place, upon complaint or proof thereof to them made by warrant under *his and** their hands and seals, to cause the same to be levied by distress and sale of the offender's goods, rendering the overplus, if any be, to the said owner, reasonable charge for distress being first deducted; and in case no distress can be had, then to convey the offender aforesaid to the common gaol, there to remain without bail or mainprise until he shall cause the same to be paid as aforesaid.

Clause [41] 43 :—And be it further enacted, by the authority aforesaid, That all and every person and persons who have or hath taken arms on the behalf of the King's Majesty that now is, whilst he was Prince of Orange, or who have associated on his behalf, or who have, with or without commission from him, acted or done anything to assist or promote his interest before his accession to the Crown, and all persons acting by, from or under them relating thereunto, shall be and are hereby saved harmless and indemnified in that behalf, so as this be not construed to extend to discharge any person for any sum of money or plate that hath been collected, levied or received, which he hath not accounted for to their Majesties or repaid or delivered the same to the parties from whom it was so collected, levied, or received.

Clause [42] 44 :—And be it further enacted, that it shall and may be lawful to and for the *Lieutenant or the* Deputy Lieutenants, or any three or more of them, by warrant under their hands and seals, to compel all and every person and persons who are or have been Treasurer or Treasurers, Receiver or Receivers for any money levied by virtue or colour of an Act made in the 13th year of King Charles II., intituled An Act for ordering the Forces in the several counties of

* The Amendment made in Committee had "or" instead of "and" (Com. Book, 27 July). It was altered as above on Report.

† The Amendment made in Committee was "or an estate lie." It was altered as above on Report.

‡ This Amendment is found in the fair copy of Amendments (Annex (b) below), and therefore appears to have been agreed to on Report.

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this Kingdom, to give them an account of all money received or disbursed, touching the same; and if he or they shall refuse or neglect to make such accounts, then *the Lieutenant or, in his absence,** the Deputy Lieutenants, or any three of them, shall have power to commit him or them to the common gaol, there to remain without bail or mainprise until he or they shall bring in such accounts; and if upon examination it shall appear that any money is in his or their hands, then the said money shall within three months be paid to such person or persons whom *the Lieutenant or by his direction* the Deputy Lieutenants or any three of them shall appoint (which money shall be disposed of to such uses and for such purposes only as other money to be levied by virtue of this Act); which if the said Treasurer or Treasurers shall refuse or neglect to do, then it shall and may be lawful to and for *the Lieutenant or by his direction* the Deputy Lieutenants or any three of them, to levy such money by distress and sale of the goods and chattels of such Treasurer or Treasurers, Receiver or Receivers, rendering the overplus (if any be) to the party distrained, the charge of distraining being first deducted; and if there cannot be found sufficient whereby to raise the money due, then the said *Lieutenant or, in his absence,** Deputy Lieutenants or any three or more of them shall commit such Treasurer or Treasurers, Receiver or Receivers to the common gaol, there to remain without bail or mainprise until such money be paid.

Clause [43] 45:—And it is further enacted, That all and every Treasurer or Treasurers, Receiver or Receivers hereafter to be chosen by virtue of this Act shall give such security every year as the *Lieutenant or, in his absence,** Deputy Lieutenants or any three of them shall require that they will make their accounts and pay out all moneys at such time and in such manner as is appointed by this Act; And if any Treasurer or Treasurers, Receiver or Receivers shall refuse or neglect to give such security, and yet presume to receive any money to be levied by virtue of this Act, then it shall and may be lawful for the *Lieutenant or, in his absence,** Deputy Lieutenants or any three of them, to commit such Treasurer or Treasurers to the common gaol, there to remain without bail or mainprise until such security be given.

[Clause 44 †:—And be it further enacted by the authority aforesaid, That all Acts of Parliament heretofore made in the reign of the late King Charles II., relating to the Militia of this Kingdom, shall be and are hereby repealed.

Clause 45:—Provided nevertheless that all Commissions granted to the several Lieutenants of the counties and places in this Kingdom, and all orders made or to be made before the 1st day of November 1689 for the charging any person or persons with horse or foot and arms, or for charging any person or persons to contribute towards the finding horse or foot and arms, or the exercising the Militia, or appointing officers or any other thing relating to the execution of these laws, shall remain in full force until the said 1st day of November, unless any new Order, in pursuance of this present Act, shall be made to alter or determine the same.] *Parchment Collection.* [Brought from the Commons this day

* The Amendment made in Committee (Com. Book, 27 July) was simply to substitute here as elsewhere "or" for "and." The House on Report agreed to the Amendment in this case, with the addition of the words "in his absence."

† The Committee, after postponing this and the next clause on 27 July, agreed on the 30th to leave them out and add Proviso C. (Com. Book). This Proviso, however, was disagreed to on Report, and is not among the papers.

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(L. J., XIV. 282). The amendments made in Committee, on Report, and again in Committee on recommitment are described in the text above; those agreed to on Report being numbered marginally on the Engrossment. The Chairman of the Committee on July 23, 24,* 27 and 30 was L. Cornwallis, and on Aug. 5 (on recommitment) V. Newport. The Committee (on recommitment) met also, but only to adjourn, on Aug. 7 (L. Cornwallis, Chairman), Aug. 8 (E. Rochester, Chairman), and Aug. 10 twice (L. Cornwallis and V. Weymouth, Chairmen), (Com. Book of dates). After this the Bill dropped. On 8 Nov. the MS. Min. have this entry, not in L. J.: "Leave given to E. Macclesfield to have the Bill of the Militia of the last Session, with the Amendments, for three or four days, which was granted and the Bill delivered to him."

Annexed:—

- (a.) 2 Aug. List of Lords' Amendments made in Committee (Com. Book, July 23, 24, 27 and 30). Two papers. [Reported this day (L. J., XIV. 302). The House considered them on this day and the next, and, after making alterations in several of them, recommitment the Bill to the same Committee as before, and ordered a fair copy to be made of the amendments as thus altered (MS. Min., Aug. 2 and 3). The alterations are shown on this List, the amendments disagreed to being struck through and not appearing in the fair copy.]
- (b.) 3 Aug. Fair Copy of Lords' Amendments as agreed to on Report. [See note to preceding paper.]
- (c.) 2 Aug. Amended draft of Proviso, marked †, as follows:—
Provided always and be it enacted by the authority aforesaid, That it shall be in the power of the Chief Governor, Constable, or Lieutenant of their Majesties' Tower of London for the time being to make or turn the Militia of the Tower Division in the county of Middlesex, commonly known by the name of the Tower Hamlets, into [fusileers and grenadiers] ‡ *snaphance or firelocks, which said alteration shall so remain for the better securing their Majesties' Royal fort of the Tower of London, ‡* [and that it shall be in the power of the said Governor, Constable, or Lieutenant for the time being, with the assistance of three or more of the Deputy Lieutenants, to clothe and order the said Militia of fusileers or grenadiers as may be most suitable to them.]
Marked, Agreed. Noted for insertion in Pr. 16. L. 27 of Engrossed Bill. [Added in Committee (Com. Book, 27 July), and agreed to on Report this day.]
- (c.) 2 Aug. Amended Engrossment of last Proviso. [Agreed to, as amended, on Report, this day.]
- (d.) 2 Aug. Amended draft of Clause marked B, as follows:—
And be it further enacted, That it shall and may be lawful for the respective Lieutenants [or, in their absence, by their directions] and § for three or more Deputy Lieutenants, to [rate]

* The Committee adjourned on July 24 till the 26th (Com. Book), on which day the House adjourned them till the 27th. (MS. Min., 26 July. No entry in L. J.)

† First altered into "fusileers or grenadiers," and then struck out and superseded by the words in italics. These words being written over an erasure in the Engrossment of this Proviso, it is probable that the first amendment was made in Committee and the second on Report.

‡ The words that follow are struck through in the draft; an amendment probably made in Committee, as they do not appear on the Engrossment of this Proviso.

§ This Amendment was evidently made on Report, the word ("and") being written over an erasure in the Engrossment of this Proviso.

enjoin * each respective parish within their respective counties, to provide and send out at the times this Act directs, either horse or foot, as shall be required by the Lieutenant or three Deputy Lieutenants as aforesaid, not exceeding ten foot or one horse, for every 500*l.* per annum or 6,000*l.* personal estate as aforesaid, lying or being within the respective parish, and so for a greater or less proportion, under the penalties of not providing horse or foot as aforesaid, anything in this Act to the contrary notwithstanding. Provided that, after the respective parishes are so rated as aforesaid to horse and foot, it shall not be in the power of the Lieutenant or Deputy Lieutenant to change the foot into horse, or horse into foot for the time to come. *Marked, Agreed.* [Added in Committee (Com. Book, 27 July), and agreed to on Report this day.]

(*d.*) 2 Aug. Engrossment (amended as above in respect of the first amendment of last Clause. [Agreed to, as amended, on Report this day.]

(*e.*) Aug. 5 List of Lords' Amendments (2) made in Committee, on recommitment, this day (Com. Book). The first is to add some words in Pr. 4, line 22 (see Clause .5 in text above and note), and the second is to add the Proviso given in next paper.

(*f.*) 5 Aug. Proviso marked O, as follows:—Provided always that it shall be lawful in the several counties of North and South Wales and the counties of Northumberland, Cumberland, Westmoreland, and Cornwall, if it be found convenient by the Lord Lieutenants and Deputies thereof, instead of horsemen to find dragoons. [Agreed to in Committee, on recommitment, this day, but not directed where to be brought in (Com. Book).]

121. July 16. Coffee, etc. (Customs Collection) Bill.—Petition of divers merchants of the City of London, in behalf of themselves and others, trading in Coffee, Cacao Nuts, Tea, and Chocolate. The Bill for taking off all Excise on these commodities and laying new import duties upon them, to be collected by the Officers of the Customs, makes no provision for repaying or drawing back from their Majesties the new duties or additional impositions for all such of the commodities as shall be again exported within 12 months next after the importation thereof, as has always been done where additional duties have been laid on other goods, and found beneficial to trade, for reasons given in a printed paper. Pray that a clause may be added accordingly. *Signed* Hen. Adderley, Jos. Pratt, John Delean, Ben. Cole, Thos. Chambers, Wm. Cony, Sam. Proctor, Hum. Willett, Wm. Wrayford, Edm. Scrope, Thos. Brailsford, Hen. Hale. [Offered to the Committee this day by John Pim, and reported to the House (Com. Book, 16 July; L. J., XIV. 282). The Bill being re-committed on this Petition (L. J., *ib.*), the Commissioners of the Customs gave in an account of the quantities of Coffee, Cocoa Nuts, Tea, and Chocolate yearly exported during the last two or three years (Com. Book, July 18, 22, 23), and a Clause was drawn by the Judge to give effect to the Petition (*ib.* July 23, 24; and agreed to be added on Report, after a debate and division, by 34 to 29, viz.: Contents 25, Proxies 9; Not-Contents 23. Proxies 6. Tellers. E. Bath and E. Aylesbury. (L. J., XIV. 292. MS. Min. 24 July.) After two

* This Amendment or correction is in the same handwriting as the draft, and was no doubt made in Committee.

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Conferences on the Clause, on which the Lords insisted (L. J., XIV. 293, 297), the Bill dropped.]

Annexed:—

- (a.) 20 July. Letter from John Sansom, addressed to John Brown, Clerk of the Parliaments, enclosing the Account (*see next paper*) as ordered by the Committee, which had been prepared by the Collector outwards of the port, as directed by the Commissioners of Customs. *Dated* Custom House, London, 20 July 1689.
- (b.) 20 July. Account of what Coffee, Tea, Chocoletta, and Cocoa nuts have been exported in two years from 1 July 1687 to 1 July 1689, viz.: From 1 July 1687 to 1 July 1688, 510 cwt. Coffee, 3,000 lbs. Tea, 80 cwt. Cocoa nuts. From 1 July 1688 to 1 July 1689, 70 cwt. Coffee; no Tea nor Cocoa nuts shipped off. No Chocoletta shipped off from 1 July 1687 to 1 July 1689. Several inconsiderable parcels of Coffee, Tea, Chocoletta and Cocoa nuts have been sent by merchants to their correspondents abroad as presents, by bills of store of very small value. *Signed* Sam. Terrell, pro Coll. Appended to preceding. [Ordered by Committee on 18 July, and read on July 22 and 23. Com. Book of dates.]

122. July 16. D. Buckingham's Bill.—Amended * draft of an Act for the better enabling the Trustees of the Right Noble George, late Duke of Buckingham to sell the estate late of the said Duke, for payment of his debts. The Suppliants for the Bill are [Edward Manfield], George Bradbury, William Cherry, James Hayes, Esquires; and Elizabeth Browne, Widow, [Michael Baker, Stephen Phillipps, Nicholas Gooding, George Bishop, Gent., John Combes, Valentine Houseman, John Pearce, and Sarah Jenkes, Widow,] all creditors of George, late Duke of Buckingham, on behalf of themselves and [the rest of] *other* the said creditors. The Preamble recites [that the late Duke by deed of 11 August 1671 settled his estate, or most of it, on Anthony, E. Shaftesbury and others, on trust to raise 5,000*l.* a year for him for life out of the manors of Burleigh and Helmesley, and out of the rest to raise moneys to pay his debts, and dispose of the surplusage as the Duke should appoint. Part of the estate was sold and several of the scheduled debts paid off, and by indenture of 24 Dec. 1675 all the estate then left unsold, was transferred to Thomas, Bishop of Rochester, Sir Robert Cleyton, Knt., and John Wildman, Esq., subject to the former trust. By another deed of 5 July 1678 the Duke and Duchess appointed the said trustees to raise money to discharge all the debts remaining on the estate and to make other payments out of the surplusage, after the Duke's death, with a power of revocation; which deed the Duke confirmed by his will of 6 July 1678, and left the residue of his personal estate to the Trustees, whom he appointed executors, and on 1 August 1678 declared by a codicil to his will, that the executors should by lease or sale dispose of such of his lands in the counties of York, Rutland, and Leicester as might raise money, over and above the payment of his debts, sufficient to pay off all the incumbrances on the estate of Cleifden and other lands purchased by the Duke from Edward Manfield Esq., that the same, being cleared, might be settled and enjoyed by the Duchess and Sir William Villiers. Subsequently, the Duke borrowed of George Bradbury, James Hayes, Sir Robert Gayer, William Cherry, Thomas Browne, Francis Jenkes, and

* The additions are shown by italics, the omissions by square brackets.

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George Pitt, several large sums, and for security the Duke and Duchess directed the trustees, by moneys to be raised out of the trust estate, to pay these debts, and appointed the trustees to stand seized of the estate in trust for the creditors, until payment. Other debts were owing by the Duke at his death to these and other creditors, including tradesmen and workmen employed in building Cleifden (*see* Calendar, 11th Report, Appendix, Part II., No. 446), for which decrees for sale were obtained in Chancery against the Duke and his trustees during his lifetime, but before the trustees had sold, or the debts were paid, the Duke died, in 1687. Since his death several entries on his estate have been made by his next heir, who claims the equity of redemption, and also by the Duchess and Sir William Villiers, who claim under the deed of 5 July 1678 and the Duke's will and codicil and other subsequent settlements. The said heir, being a minor, cannot join in any conveyance to sell the estate or any part of it to discharge the mortgages or pay the debts, as the Duke had intended, and unless a speedy sale be made, the estate will be swallowed up, and the creditors ruined, and the heir and Duchess, and Sir William Villiers, who claim advantages out of the estate after the debts are paid, will be disappointed]. *That whereas the Duke in his lifetime and at the time of his decease was indebted to the Suppliants and several others in large sums, for payment whereof he made provision for raising moneys by sale of his estate, but the Duke being dead, and there is a necessity that all or a great part of his estate should be sold for payment, and without such sale the debts and interest may much prejudice the estate.* The Bill proceeds to enact that the manors of Helmesley in Yorkshire, of Burleigh in Rutlandshire, of Whaddon in Bucks, and all other lands of the Duke at the time of his death, *except Cleifden and other lands in Bucks or Berks purchased of Edward Mansfield*, shall be settled in Thomas, Bishop of Rochester, Sir Robert Cleyton, John Wildman, *Thomas, Marquess of Carnarthen, Lord President, Thomas, Earl of Aylisbury and Henry, Bishop of London*, subject to the trusts already made, in trust to be sold for payment of [the schedule debts and mortgages in the first place, and afterwards of such other other debts as were due at the time of the Duke's death] *all the debts of the late Duke and sums charged by him or chargeable on the said lands.* The trustees appointed by this Act are directed to make sale forthwith, and the surplus after payment of the debts *and sums chargeable, and also such of the lands as shall not be sold*, shall be paid and conveyed to the persons entitled thereto. Saving to *Mary, Duchess of Buckingham, her right of dower and other interests in the lands, and to the King and Queen and all other persons etc.* other than the [heir at law and the] heirs of the late Duke [and all others claiming under the late Duke] all right, title etc. in the lands settled in the trustees. [Read 1^a this day. L. J., XIV. 282. Dropped in the Commons. C. J., X. 382.]

Annexed :—

- (a.) 26 July.—Petition of Elizabeth Villiers, commonly called Viscountess Purbeck, for and on the behalf of her grandson, the heir male of the late Duke of Buckingham. Petitioner is advised that the late Duke's estate was so settled as to descend to her grandson free of the Duke's debts, or at least that her grandson is entitled to a residue of the estate after those debts are paid. He ought therefore to have some fit guardian assigned to inspect his title and examine the creditors' pretended debts, before the Bill be allowed to pass. He is not yet 12 years old, and his mother, the Lady Margaret, formerly Lady Muskery, since com-

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monly called Lady Viscountess Purbeck, and Robert Fielding, Esq., her husband, are both known Papists, and have bred up Petitioner's grandson in the Romish religion, and Mr. Fielding is now with the late King James in Ireland. Prays their Lordships to appoint a guardian accordingly. *Signed*, Eliz. Villiers, commonly called Viscountess Purbecke. [Read this day and referred to the Committee on the Bill. L. J., XIV. 296. *Mr. Foulkes* (Counsel for the heir at law) was heard on the Petition by the Committee on 30 July, and complained that the Bill took the estate from the infant, and prayed leave to add three trustees to join with the Duke's trustees to sell, and that the debts might be settled in Chancery. *Mr. Cherry* (for the Creditors) said that all the estate was decreed in Chancery to be sold for payment of the Duke's debts, and that in the Duke's lifetime. The account of the debts was seven years in Chancery before being perfected. (Com. Book, 30 July.) An agreement was afterwards effected between the parties, who offered amendments accordingly, on all points except as to the guardians to be named in the Bill, and their powers. After argument, the Committee decided by 6 to 2 to name guardians for the infant heir, and then agreed to the amendments (*ib.*, August 7, 9, 10).]

(b.) 10 August.—Lord's Amendments, agreed to and reported this day. L. J., XIV. 307. Com. Book, August 7, 9, 10.

123. July 16. Monk's Marriage Bill.—Draft of an Act to relieve Christopher Monk from a clandestine marriage when he was under the age of 14 years. The Preamble recites that Christopher Monk, the eldest son and heir of Col. Thomas' Monk, being placed about October last with one Mr. Foubear, near the Haymarket, for education, by direction of the trustees of Christopher, late Duke of Albemarle, and news being brought about Christmas of the Duke's death in Jamaica, and it being reported that he had left Christopher Monk most of his estate after the death of the Duchess, one Matthew Hungerford, of Lime St., London, a pastry-cook, insinuated himself into young Christopher's acquaintance, and by frequently inviting him to his house and giving him small sums of money, got into his good opinion, and afterwards seduced him to meet him at a tavern on 12 February last, where having made Christopher drink to excess, Matthew and his wife and daughter Sarah, with others their confederates, carried him to Pancras Church, and by the wife Mary personating and pretending to be his mother, they procured him to be married to their daughter Sarah, and for a show of consummation caused the couple to be bedded, and afterwards sent Christopher back to Mr. Foubear, charging him to stay there as before, and frequently bribed Christopher by money and promises not to discover what had been done for six or seven years, by which means the matter was concealed for two months from Christopher's relations and friends, and the exact time of his attaining the age of fourteen years elapsed without his making any solemn renunciation of his marriage, which in strictness of law he was bound to do. Forasmuch as the marriage was obtained by fraud, and Christopher declares that he cannot like or approve of Sarah for his wife, the Bill declares the marriage null and void. [Read 1st this day. L. J., XIV. 282. The Committee took evidence on both sides, *Sir Charles Porter* appearing for young Mrs. Monk, and *Mr. Williams* for her husband. On behalf of the latter, the clergyman who officiated at the marriage deposed that Mrs. Hungerford had told him that she

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was Monk's mother. Monk said something sufficiently, and opened his lips and bowed. Could not say he was in drink, but the motions of his body were unquiet. Believes he had been drinking. His lips looked red. Monk's mother, Mary, did not remember when her son was born, but a Bible was produced, showing he was born on 25 Feb. 1673, and evidence was given that the entry had been there for six years. *Mr. Monk* deposed that *Hungerford* told him his mother designed to poison him, so that his younger brother might have the estates. He denied having consummated the marriage. *Sir Charles Porter* said *Mr. Hungerford* was a gentleman of the ancient family of the *Hungerfords*, and had been a considerable merchant, and his elder brother had 800*l.* a year. The marriage was made entirely on the application of young *Monk*; they advised him to consult his parents, but he said he would have her notwithstanding them or his mother. *Mrs. Hungerford* said that one *Mr. Mell* sent his son to invite her husband and daughters to dinner on New Year's Day. Young *Mr. Monk* was at *Mr. Mell's* when they came thither. *Mr. Mell* pressing them to stay all night, and her husband being unwilling, *Mr. Monk* asked her to let her daughters stay, and he would see them home the next morning, and she and her husband assented on those terms. The next morning, they not coming home, and *Mr. Mell* sending his clerk to say they were gone to Greenwich with *Mr. Monk* and *Mell's* daughter, her husband was angry. The next day *Mr. Monk* brought them home, and at dinner told her she had a new relation, he must call her mother. On the following Thursday he came again with *Mell's* son. Her daughter not being at home, he seemed uneasy, and was earnest to have her sent for, and stayed till near 11 that night, his man being with him. The next Sunday he came again, and several days after that. He moved marriage to her about Candlemas, and told her he would rather have her than another with 40,000*l.* The Thursday after Candlemas Day he told witness he would marry her daughter; he scorned the idea of her being his housekeeper. On Shrove Tuesday they met *Mr. Monk* at the Three Tuns Tavern in Holborn, and had a plate of oysters and a pint of wine together. The parson who married them never asked witness whether *Mr. Monk* was her son, nor spoke to her till they were married. That day they dined at *Mr. Kallander's* in Prince's Court. *Mr. Monk* told her that his mother had a design to send him beyond sea. *Mr. Hungerford* said that he never knew *Mr. Monk* before New Year's Day at *Mr. Mell's*, where they were invited to dinner, and where, at *Mell's* and *Monk's* request, his daughters stayed all night. *Monk* brought them home and came several times afterwards to his house uninvited, and desired at length his consent to the marriage, which he gave. Only a pint and a half of wine was drunk at the Three Tuns, of which half a pint was all that was drunk after *Mr. Monk* came in. They went on the Thursday before the marriage to a church in the Minories, but the minister there refused to marry them, suspecting she was not witness's daughter. *Mr. Monk* prayed him the marriage might be kept private. *Mr. Kallander* advised *Mr. Monk* to consult with his friends before marrying. Witness did not convey him out of a window at *Mr. Smith's*; he sent for witness to a coffee-house, and they walked into the fields. This was about the 20th of April. *Mrs. Monk*, the mother, was not in town at the time of the marriage. The minister who married them asked no question at the marriage but who were the couple to be married. *Edward Kallander* said that *Mr. Monk* asked him to meet him at the Three Tuns tavern. Witness took him aside and told him his friends would be angry with him, and that he was going about a business he would

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repent, and that Mr. Hungerford could give him no fortune. Monk replied that his father had married without a fortune, and he would marry this woman for his pleasure, and professed great love for her. There was a clerk present at the marriage, who said 'Amen.' Witness only saw Mr. Monk once, and that was at Mr. Hungerford's. He went with him before to the church to be married, but the minister, finding that witness was no relation, refused to marry them. *Robert Thompson* said that coming by chance to Hungerford's, the latter invited him to his daughter's marriage. Witness went. At the tavern, Mr. Monk pressed to go to be married. He drank but one glass of wine. Mrs. Hungerford did not personate Mr. Monk's mother at the marriage. There was a clerk at the wedding. Witness heard Mr. Monk tell his mother he was above 15 years old, and that he hoped he should make her a grandmother within a year. *David Boucheret* said he at the same time heard Monk tell his mother that he was above 15, and that in a short time he believed he should make her a grandmother. *Counsel for Monk*: Consummation after marriage (the marriage being before 14 years of age) makes no marriage. The minister not having interposed his office after marriage, all the act of man cannot make this a marriage. *Mr. Monk*: Mrs. Hungerford dictated the letter to him, which he wrote to her daughter, and forced him to it. *Mr. Mell*: Mr. Monk has had about 6*l.* of him these last six months.—Then all withdrew, except Mr. and Mrs. Monk and Mrs. Hungerford. *Mrs. Hungerford* says her daughter told her that the marriage had been consummated, and that she believed she was with child. *Mr. Monk* denied having consummated the marriage.—On 25 July *Mr. Monk* and *Mr. Williams* desired a day to counterprove the evidence given at the last meeting. They had a witness to prove that the Clerk of St. Pancras was not at the wedding, and that there were only 3 men there, viz., Kallender, Thompson, and Hungerford; that Hungerford said to the innkeeper "Why do you dissuade the Doctor from marrying them?" They had an entry when Mr. Monk's father and mother were married. They desired to know what Church they were refused to be married at. They then withdrew. Question: Whether Mr. Monk shall have a further day to confront Mrs. Monk's witnesses as to these points? Contents 7: Not Contents 1. Resolved in the Affirmative.—On 29 July *Mr. Stephen Heath* deposed that on a Thursday morning he was desired to marry a young couple, and was told the parents would be there. Mr. Hungerford came afterwards to him, and told him the couple were there to be married, and that his uncle was with him. Witness asked him where the father was, and he said Mr. Monk used to call him uncle. Witness then took the gentleman to the Communion Table, and asked him solemnly whether he was his uncle? He told him freely he was no relation to Mr. Monk; so witness would not marry him. *Edward Martin* said that on a Thursday morning he heard some of the company talking with Mr. Maurice. Witness then went up to Mr. Maurice, and desired him not to marry them, for the young gentleman seemed not capable of being married. Then came up a gentleman and said "I will bear you out." *Mary Martin*: The Clerk of St. Pancras, Richard Cooper, was not in the house that day. There were three men and three women. Could not tell whether the clerk was in the Church. She and her husband both believed Monk was in drink. *Sir Charles Porter* (Counsel for Mrs. Monk), offered to prove by several witnesses that the company were not in Martin's house before the marriage. *Alice Parker*: Mrs. Hungerford told her husband that she had been before the Lord Mayor. Mr. Monk said "What has the Lord Mayor to do with me? It was my own act, and I would do it, if it were to be

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done, again." *Mr. Thompson* and *Mr. Kallender* deposed that before *Mr. Monk's* marriage they heard *Mr. Monk* say that he would have 15,000*l.* with *Sir Thos. Stringer's* daughter, but he would sooner have this gentlewoman. They and *Mr. Hungerford* said they were not in *Martin's* house before the marriage. *Mr. Thompson* said *Mr. Monk* told him "I must deny all to my mother, or I shall be ruined." *Mr. Monk* gives an account of his first acquaintance with *Mr. Hungerford's* daughter, and of the progress of the affair. He cannot own her for his wife, and he shall ever endeavour to get loose from it. *Stephen Parkhurst* produces a Register of *St. Mary Magdalene's*, Old Fish Street, wherein is registered the marriage of *Mr. Monk's* father and mother, the 17th August 1673.—On 31 July the Clerk's notes of the evidence were read. Both parties being called in, are asked if they have anything new to offer. *Mr. Williams* (for *Mr. Monk*) says they have nothing new to offer, but desires leave to make his remarks on the evidence. *Matthew Hungerford* says he can prove that the 12*s.* 6*d.* given *Maurice* for marrying *Mr. Monk* was not given by him to *Mr. Yarwood*, as he swore he had done. The Sexton supplied the Clerk's place. *Mr. Williams* desires that *Cooper*, the Clerk at *Pancras*, may be taken into custody for not attending according to their Lordships' order. The Committee then agreed to report against the Bill, as in *L. J.*, XIV. 301. (Com. Book, July 19, 22, 24, 25, 29, 31.)]

124. July 17. *Belbin v. Freeman*.—Petition of *Nicholas Belbin*, Gent. *Thomas Simpkins*, of London, Scrivener, being indebted to Petitioner the sum of 100*l.*, and having several other debts, assigned to *Dodson*, *Hill*, *Gibson*, and Petitioner, as trustees for the other creditors, by deed dated 1684, all his estate, computed to be worth 1,782*l.*, on condition of the creditors releasing their debts; and it was agreed that if he should pay them 260*l.* within two months, then the lease of his house and plate should be returned to him. Petitioner in pursuance of the trust, recovered 62*l.* out of about 90*l.*, due on notes, bills, &c., and was ready to distribute this equally among the creditors. But *Simpkins* failing to pay the 260*l.*, and several of the creditors refusing to accept the agreement, Petitioner could not safely pay the money he had received. Afterwards, on *Gibson*, who had been sued on a bond with *Simpkins* to one *Thornborough*, and compelled to pay the debt, threatening to attach the money in Petitioner's hands to reimburse himself, Petitioner for his own security and that of the other creditors, caused an attachment of the 91*l.* 2*s.* to be entered in his own hands, but never proceeded further to condemn the same. In 1685 *Freeman*, *Hewer*, and others, creditors of *Simpkins*, brought a bill in Chancery against *Simpkins*, Petitioner, and others, to have performance of the agreement, and an account of the estate. The Master certified 71*l.* 2*s.* in Petitioner's hands, and appointed Petitioner to pay it to the Creditors (which he did), and also certified that there were bonds, &c., in Petitioner's hands, belonging to *Simpkins's* estate, for payment of 323*l.*, and presuming that Petitioner had confessed by his answer he had attached the same, submitted to the Court whether Petitioner should be charged therewith or not, as if he had received the same, whereas in truth the persons obliged thereby, were insolvent or were released by *Simpkins*; and the Court on 9 May 1688, charged Petitioner with the said 323*l.* This order was confirmed by Lord Chancellor *Jeffreys* on a rehearing on 25 July. Petitioner ought not to be charged as a trustee, for any sums beyond what he has received. He never received a penny of this 323*l.* nor ever entered any attachment for the same, nor had any securities for the same in his custody, when the attachment was entered. The

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Master exceeded his directions, which were only for a general account. Prays that the Orders and decree may be reversed, and that the Respondents named below and also Rob. Wilford may be ordered to answer. *Signed* by Appellant; *Countersigned* Ch. Porter and G. Clapham. [The Cause was heard on 8 Nov. *Sir W. Whitelocke* opened the case for Appellant. *Sir Charles Porter* (on the same side): The account was directed to a Master. We are charged with securities of money received, when the securities are not worth anything. *Sir Francis Winnington* and *Sir John Trevor* appeared for Respondents. (MS. Min. 8 Nov.) L. J., XIV. 335.]

Annexed:—

(a.) 24 July. Answer of John Malden, Thomas Hawkes, Jeremiah Dodson, Clerk, William Freeman, Peter Sharpe, William Hewer, Esq., William Wilkins, Richard Bowles, John Perkins, Frances Thredgold, William Searle, Anne Meakins, Susan Good, and Elizabeth Milles, widow. Simpkins, being about 2,000*l.* in debt, made the assignment mentioned to the Appellant, the Respondent Dodson, and Gibson and Hill since deceased, but not with any covenant to pay 260*l.* within two months, as alleged. Respondents know nothing of Appellant's alleged willingness to pay them their shares of what money of Simpkins' he has, but rather believe the contrary, as in his answer in Chancery, he set forth that there being a debt of 100*l.* due to him by Simpkins, he had caused the estate of Simpkins then in his possession to be attached, to satisfy the debt. Respondents Freeman and Malden had in vain applied to Appellant to account for and distribute what he had in his hands, Respondents do not know that Gibson ever threatened Appellant with an attachment, or that Appellant only attached the 91*l.* 2*s.* for the benefit of all the creditors besides himself. Respondents have never received their proper share of 160*l.* each, out of the trust estate. Pray that the Appeal may be dismissed. *Signed* by Respondents, and *countersigned* P. Bowes. *Endorsed* as brought in this day.

(b.) 24 Oct. Petition of Respondents for an early day for hearing. L. J., XIV. 324.

125. July 17. *Stuteville v. Glemham*.—Petition and appeal of Charles Stuteville, Esq., and Judith Stuteville, widow. Sir Martin, the grandfather of Petitioner Charles granted, on his marriage, two annuities, one of 60*l.* and the other of 40*l.*, to trustees for his eldest son on that marriage during his life. These came to John Stuteville, and after his death in 1670 Thos. Glemham, Esq. and Dorothy his wife, the relict and executrix of the said John, pretending the annuities to be 975*l.* in arrear, brought vexatious distresses on the estate. To prevent these, Petitioners, who claimed the estate, sued them in Chancery for an injunction, and gave with another a recognizance of 900*l.* to stand by the order of the Court. Petitioners proved that they had paid all the annuities but 25*l.*, but the Court ordered a trial on the issue whether the 975*l.* had been paid or not, and the jury found against them for 600*l.*, reduced afterwards, by direction of the judge, to 475*l.* A new trial was granted by the Master of the Rolls but refused by Lord Chancellor Nottingham, and the Court hearing the cause on the equity reserved, decreed Petitioners to pay Respondents the 475*l.* and 126*l.* costs. Glemham in 1680 got an order to have the Recognizance assigned to him, and afterwards assigned it to Lady Glemham, whereupon the Petitioner Charles was compelled to pay 208*l.*, and she not knowing

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where to extend on Petitioner's estate, bought in her own name and in the names of Sir W. Rawsterne and Thos. Owinby, several mortgages made by the said Charles of his estate to the late Lord Keeper and his brother Roger North, Esq., and pays them 2,300*l.* principal and 86*l.* 5*s.* interest, and she and her trustees afterwards brought a bill against Charles to make him pay those sums or be foreclosed of the equity of redemption, and the Lord Keeper, on hearing the cause in 1683, decreed against Charles. Pray that the decree may be reversed, and Sir Thos. and Lady Glemham, Sir W. Rawsterne and Thos. Owinby ordered to answer. *Signed* by Appellants, and *countersigned* by Williams and John Cressett. *Endorsed* as brought in on 16th. Read this day L. J., XIV. 284.

Annexed :

- (a.) 17 July. Affidavit of Charles Stuteville relating to his previous proceedings in the cause. *Endorsed* as read this day.
- (b.) 3 May 1690. Petition of Appellants that the Respondents be ordered to answer. L. J., XIV. 484.

126. July 17. Tithes Recovery Bill.—Exceptions to the Bill for the more speedy and easy recovery of Small Tithes, vizt.—§ 1. That in all causes relating to small tithes which shall for the future be withholden by any person, the Ordinary shall have power to hear and determine such cause summarily and *vivâ voce*, and to give due costs of suit to the party aggrieved. § 2. That if the party condemned to pay his tithes and costs thereupon shall not obey the sentence or decree of the Ordinary, that then upon information and request of the Ordinary to two Justices of the Peace of the same county, the said Justices shall be empowered to grant their warrant to the Constable or Churchwardens for distraining the goods of the person so refusing, out of which satisfaction shall be made to the party who has obtained the sentence. § 3. That if the party sued, or any witnesses held necessary in the Cause, do not appear when cited, or do not obey the orders or decrees of the Ordinary, any two Justices, on information and request made, may grant a warrant to attach them and keep them in prison, till they enter into recognizance to obey the Ordinary's decrees in the cause. § 4. That the party appealing from the Ordinary's decree, shall bring into court the principal money and the costs adjudged, and until that be done, the Ordinary shall not be compelled to defer to the Appeal, and the party who has gained the decree of the ecclesiastical judge, shall give in security to repay the principal money and costs to the party condemned, in case the latter shall gain his Appeal. § 5. That where any custom, prescription, *modus decimandi* or title is alleged, or that the witnesses, by reason of sickness, business, or long distance, cannot conveniently attend, the trial shall be in the usual manner according to the course of proceedings in the Ecclesiastical Courts. § 6. That the manner and method of proceedings ordered by this Act shall be used for the recovery of Church rates. § 7 *et ult.* That if the party sued shall during the suit or after sentence go into another county than that where the cause is commenced or depending, the Ordinary shall give information and make his request to two Justices where the party shall be, who shall be empowered to cause such party to be attached and put in prison until he shall give recognizance to abide by the Ordinary's decree, or cause the goods of the party so removing to be distrained. That if the Ordinary shall be in the Commission for the peace, in the county where the complaint lies, for any of the causes specified in this Act, he shall be empowered to act as a Justice. That it shall be lawful for the Ordinary,

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when either of the parties or witnesses in the causes specified in this Act shall not obey the sentence of the Court, within fifteen days after such contumacy to signify the person so contumacious to the King in Chancery, and there shall issue out of Chancery thereupon a writ *de contumace capiendo*, which shall have the same effect, and be taken out of, and renewed in the same Courts, after the same manner as a writ *de excommunicato capiendo*. That this Act may extend to all causes relating to passing Churchwardens' accounts or the recovery of wages and dues belonging to parish clerks or sextons. [Ordered by the Committee on 15 July, and delivered in by Dr. Newton, and read this day. (Com. Book of dates.) The Bill was brought from the Commons on 29 June (L. J., XIV. 260), and referred to a Select Committee on 2 July, (*ib.* 265). The Committee met on July 11, 13, 15, 17 and 19, and again, on re-commitment, on Aug. 9, 14, 15 and 16; the Chairmen being E. Rochester on July 11, and Aug. 12 and 15; the Bishop of London on July 13 and 15; L. Ossulston on July 17; E. Bridgewater on July 19, and Aug. 9 and 16; and V. Fauconberg on Aug. 14. The meetings of the Committee on Aug. 12,* 14, and 15 were only to adjourn.—On 11 July the Committee ordered Dr. Oxenden or any other of the Civilians at Doctors Commons to be heard.—On 13 July *the Civilians* say the care of the matters of tithes and repair of churches is purely ecclesiastical and cannot well be determined but by men that have studied the ecclesiastical laws. If this Bill pass there will be an end of the Archdeacons' and Bishops' visitations. The Bill takes away the jurisdiction that has been in the Church since Magna Charta. The putting the rates of churches out of the cognizance of the Ordinary would be very fatal. Then, the House being sitting, and the Lords called in before the Civilians had done speaking, they were ordered to attend on the 15th.—On 15 July, *Dr. Newton* being called in and asked what he has to say to the amendment of the Bill, says that if the Bill pass as it is now brought in it would be very grievous to the subjects. The Judges here would be parties either in relation to themselves or their tenants. This Bill would make visitations useless, which would tend in consequence to the ruin of churches. There is no provision for repair of chancels. He proposes that causes of this nature may be heard summarily and *vivâ voce* ordinarily; that there be a power to ecclesiastical officers to distrain or commit; that they may be Justices of course. Prays the jurisdiction may be left in the same hands as before; that if any person shall lie in prison and not obey the judgment of the Court, the Justices may, after a month, distrain on the offender's goods. Dr. Newton was then ordered to bring his exceptions to the Bill in writing.—On 17 July, after the Exceptions were read, the title of the Bill was agreed to, as well as the 1st paragraph by 8 votes to 2.—On 19 July, *Dr. Newton* being called in, says the Archdeacon, upon information that the church is out of repair, cites the churchwardens, whom, upon their appearing, he admonishes to make a tax and repair the church. The Clause concerning the repair of churches was read. *Dr. Newton*: If the method be slow in the Ecclesiastical Court, it may be shortened by this Bill. The Committee then made three amendments† to

* On Aug. 12 the Committee met in the morning to adjourn till 4 p.m. that day. (Com. Book.) No entry is found of this adjourned meeting, which would not appear to have been held, for on the 13th the House ordered them to meet the next day. (MS. Min.)

† The Commons' Engrossment of this Bill is wanting, having been left with the Commons when returned amended. But these three amendments, fit in with, and were embodied in the text of the Lords' Bill of 24 March 1689-90 (No. 234). See notes to Clause 12 of that Bill.

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the Clause, and ordered the last six lines to be reported specially for consideration by the House. (Com. Book, 19 July.)—On 25 July these amendments, on report, were agreed to. (L. J., XIV. 293.)—On 6 Aug. the Bill was considered in the House, pursuant to order of 26 July, and, after debate, recommitted (*ib.* 296, 305. MS. Min.). The Committee, on re-commitment, made some further amendments* to the Bill, and negatived by 7 to 5 a Proviso marked B, which was offered by the Bishop of Bangor to be added at the end of the Bill. (Com. Book, Aug. 9, 16).—On 17 Aug. these further amendments were reported and agreed to. Last Clause read. Question put: Whether to agree with the Committee in leaving out this Clause? Contents 23; Not-contents 22. Resolved in the Affirmative. Tellers, E. Aylisbury and L. Cornwallis. Bill read 3^a, and passed and returned to the Commons amended (MS. Min. L. J., XIV. 314), where it was ultimately lost. (C. J., X. 268.)]

127. July 18. Writ of Summons (L. Clifford of Lannsburgh).—Writ of Summons, dated this day, to Charles Clifford, de Lannsburgh, Chr. introduced this day, by mistake, as L. Boyle. This is the Writ as afterwards amended. L. J., XIV. 285, 307.

128. July 18. E. Macclesfield and E. Sussex.—Draft order referring to the Committee for Privileges a motion on behalf of E. Macclesfield and E. Sussex for leave to make their claim to H. C. as Gentlemen of the Bedchamber, upon the Bill for Sugars and Tobacco. L. J., XIV. 286. *In extenso*. [The matter was referred to the Committee for Privileges, who reported that they should be left to make their application to the House of Commons. *ib.* No entry of proceedings in Priv. Book.]

129. July 18. Rebellion (Attainder) Bill.—Petition of Anne Whitmore, widow, on behalf of her four children, being minors. William Whitmore, late of Balmes, in Middlesex, left his lands to trustees, of whom the Marquess of Powis was one, and chief in title, to be sold for the equal benefit of his sisters and their children and grandchildren. The proceeds have been divided accordingly to all the parties so entitled, except to Petitioners' four children, the grandchildren of one of the sisters, who being minors, could not give a discharge to the trustees; and their share, amounting to 3,250*l.* was left with Mr. Francis Child, a goldsmith. The Marquess, who held Child's note, has converted the money to his own use. Prays that the Marquess' real estate may be declared in the Bill to be liable to payment. *Endorsed*: Earl of Craven and Lord North. [Delivered to the Committee on the Bill this day. Read 16 Aug. and C. Justice Holt desired to draw a Clause, for which see Annex (*x*) below. (Com. Book.)

The Bill "for attainting several persons now in rebellion against his Majesty,† to which this and other papers refer, was brought from the Commons on 11 July, read 1^a the next day, and read 2^a and committed to a Select Committee on the 13th. (L. J., XIV. 273, 278, 279.) This Committee met for business on July 16, 18, 20, 25, 29, 30, 31,

* See notes to Clauses 1, 2, 8, 10, 12, and 14 of the Lords' Bill of 24 March 1689–90 (No. 234).

† It was introduced in the Commons on 20 June under the title of "An Act for the attainting of certain persons of high treason." Its object, as stated when leave was asked to introduce it, was to attain of high treason certain persons who were then in Ireland or any other parts beyond the seas, adhering to their Majesties' enemies, and who should not return into England by a certain day. C. J., X. 190.

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and Aug. 12, 15 and 17,* and on July 22, 27, and Aug. 3, 7, 9, 13 and 14 only to adjourn, the Chairmen on various days being E. Rochester, L. Paget, L. Cornwallis, D. Bolton and E. Bridgewater, who was added on 25 July. (L. J., XIV. 293.) The Bill was reported on 19 Aug. when it was read 3^a and returned amended to the Commons. (L. J., XIV. 316.) The Lords' Amendments are given in C. J., X. 269.† The Bill itself is not among the records, having remained with the Commons, after its return, but its contents are partially ascertainable. The names of the persons to be attainted were set out twice in the Preamble and in Clause 1, extending to Skin 2, l. 34, of the Commons' Engrossment. A fragment of the text in Clause 1 as amended‡ requires that they shall . . . § on or before "the 24th of [August] October 1639, or shall render him or themselves to the Commander-in-Chief or any other General Officer of their Majesties' Forces in Ireland at or before the twenty-ninth day of September next [and also abide their legal trial for such their treasons]," or else "suffer and forfeit"|| . . . The list, as amended by the Lords, was as follows:—

William, Marquess of Powis.	Sir Patrick Trant.
[Lord Thomas Howard.]	John Trinder.
[Henry, Lord Dover.]	Thomas Collins.
Sir Henry Bond.	Col. Dominic Sheldon.
James, Duke of Berwick.	Lieut.-Col. William Mansell Barker.
[Robert, Lord Hunsdon.]	[Col. Hugh Sutherland.]
John, Earl of Melfort.	Major Boichier.
Sir Alexander Fittou.	Col. Buchan.
[Sir Roger Strickland.]	<i>Richard, Earl of Tyrconnell.</i>
[Sir Edward Herbert.]	<i>Col. Richard Hamilton.</i>
[Sir William Jennings.]	<i>Louis Doe.</i>
Francis Plowden.	<i>Lord Antrim.</i>

* The proceedings on Saturday, 17 Aug., in Committee and in the House deserve notice. The Committee met in the morning, presumably at 8 o'clock, the hour to which they had adjourned the previous day, and after considering some new clauses, including one (Annex (ae) below), which they agreed to refer to the House, and taking further evidence, "adjourned during pleasure." On resuming, they took evidence from Petow, and then again "adjourned during pleasure." After another interval, they again met, E. Bridgewater, as before, in the chair, and after finally settling who were to be left out of, and who added to the Bill, ordered to report the Bill with amendments. (Com. Book.) The House, at its morning meeting, after swearing Petow at the Bar, "adjourned during pleasure and *adjourned into a Committee in the Prince's Lodgings to expedite the Bill*," and on resuming, E. Bridgewater reported that the Committee had sat and gone through the Bill, but, there being a great many amendments, they could not be ready to report under two hours, and therefore thought fit the House should adjourn till six o'clock, which the House agreed to do. (L. J., XIV. 315. MS. Min.) At the evening sitting the MS. Min. have as follows: "After debate, Question put, Whether the Report of the Bill be now made? Resolved in the Negative. Ordered *to report* that the Report of the Bill be made on Monday next the first business." The entry in L. J., XIV. 315, states: "Ordered that the Report of the Bill be made on Monday next the first business." The words here italicised seem to show that the Bill was finally reported to the House not by the Select Committee but by a Committee of the Whole House. The Commons had sent messages to remind the Lords of the Bill on July 24 and Aug. 9 and 10. (L. J., XIV. 291, 306, 307.)

† For the Clauses added by the Lords see Annexes (r), (s), (f), (u), (w), (x), and (ac).

‡ Here and elsewhere below, the omissions are shown by square brackets and the additions by italics.

§ The text here is wanting. The words were probably "render him or themselves in England." See Annex (aa).

|| Skin 1, ll. 31, 32. For the amendment proposed for insertion here see Annex (ac).

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Then followed what is described (Annex (*r*) below) as a "Seizing Clause,"* which the Lords superseded by two new Clauses (Annexes (*r*) and (*s*) below). It extended apparently to Skin 3, l. 34 (C. J., X. 269), after which the original text was retained with some amendments down to Skin 5, l. 14, where the Lords omitted a portion as far as the word "and" in Skin 6, l. 20, and inserted the Clauses given in Annexes (*t*), (*u*), and (*w*). Beyond Skin 6, l. 20, there is no further clue to the original text, the only other amendments of the Lords being to add two more Clauses (Annexes (*x*) and (*ac*) below) at the "end of the Bill." With regard to the persons to be attainted, Lord Massareene, Sir Richard Reynolds and some other Irish gentlemen, who attended the Committee,† and suggested amendments and Clauses (see Annexes (*ab*) to (*ae*) below), offered some witnesses, who were examined, viz^t, Francis Nevill, John Murray, Robert Smith, Joseph Bennet, John Vernon, Mathew Gun, and William Wetnall. (Com. Book, July 18, 20, 25.) Being asked on July 29 if they had any other evidence to produce, they said, "We know of none. We do not take upon us to prosecute anybody. There are several gentlemen in town from Ireland, as Sir Oliver St. George's eldest son. All that have been examined by the Commons, have been heard by your Lordships." (*ib.*, 29 July.) The Committee, on considering Clause 1 and reading an abstract of the evidence already taken (Annex (*o*) below), agreed, after retaining some names and adding Louis Doe and Lord Antrim, to put certain others, against whom there did not appear full evidence to condemn them of adhering to their Majesties' enemies in Ireland, into a Proclamation, to be issued in pursuance of a Clause then agreed to be added to the Bill,‡ providing that, if they rendered themselves to such persons as his Majesty should direct by the Proclamation by the 30th of September next, they should be received under the protection of the Government. This list included L. Dover, L. Hunsdon, Sir R. Strickland, Sir E. Herbert, Sir W. Jennings, T. Collins, Col. Sheldon, Col. Sutherland, Major Bochier, and Col. Buchan, besides the following not named in the Bill, viz^t :—

Capt. Stafford.	Col. Richard Hamilton.
Mr. FitzJames.	Capt. Arundel.
L. George Howard.	L. Galmoy.
Sir John Sparrow.	L. Netterfield.
Col. Dorrington.	Col. Ramsay.
Col. Anthony Hamilton.	Sir Maurice Eustace.

The Committee then ordered to report that the Commons might be desired by a Conference to give a list of the persons that gave evidence before them. (Com. Book, 30 July.) This report was made the next day, and the Commons at a Conference on 5 Aug., communicated the names of William Watts, Mathew Gun, Bazil Purefoy and William

* As to this Clause the Com. Book has the following : 25 July, *Mr. Longvile* desires that the 1st of August, the day appointed for the Sheriffs to enter, may be considered. 16 Aug. *Mr. Folkes* and *Mr. Longvile* speak to the leaving out the Clause beginning at Skin 2, l. 34. *Holt, C. J.*, says it would occasion danger to the Sheriff and trouble to the party. He is desired to consider the Clause.

† The Committee at their first meeting had ordered all persons concerned to attend, the Order to be affixed to the doors of the House. (Com. Book, 16 July.)

‡ No such Clause is among the papers, and no further reference to it or to the Proclamation appears. The proposal seems to have dropped, for Col. Richard Hamilton, whom the Committee at first agreed to put into the Proclamation, was afterwards added to Clause 1 of the Bill.

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Dalton, who were ordered to attend the Committee. (L. J., XIV. 300, 302, 304.) Watts was examined on 17 Aug., when the Committee also took evidence from two new witnesses, Richard Swan, and John Petow, who had recently arrived from Ireland,* and it was agreed at the afternoon meeting that day that no person should be named in the Bill without two persons witnessing to his being in some employment in Ireland. (Com. Book, 17 Aug.) E. Bridgewater, in reporting the Bill with the amendments on the 19th (L. J., XIV. 316), stated that they went by a rule that, except they had two witnesses to prove the fact, they did not think fit to attaint anyone. (MS. Min., 19 Aug.) The proceedings relating to the amendments proposed at various stages to the Bill are given in the notes to the Annexes below. The following is all the information recorded as to the several persons whose cases were considered:—

†*William, Marquess of Powis*.—Saw him frequently in Dublin Castle, where they gave him the title of Lord Chamberlain and Duke Powis. He officiated with a white Staff in his hand as Chamberlain, *Nevill*. Saw the Duke Powis; they called him Lord Chamberlain, Saw a letter from him to Lady Clancarty, *Murray*. Saw one called the Duke Powis, *Smith*. Saw the Duke Powis several times in the Castle with his white rod with the King, *Vernon*. Has often seen him with his white rod, *Gun*. (Com. Book, 20 July.)—Left in Clause 1. (*ib.*, 30 July, 12 Aug.)—Was seen by *Swan*, *Watts*, and *Petow*; the last-named knew him well. (*ib.*, 17 Aug.)

†*Lord Thomas Howard*.—Saw a gentleman near the walls of Derry called Lord Howard, *Nevill*. Saw one called Lord Howard, *Smith*. Saw Thomas, Lord Howard, *Murray*. *Vernon*. (Com. Book, 20 July.)—Left in Clause 1. (*ib.*, 30 July.)—Left out by 7 votes to 5. (*ib.*, 12 Aug.)—Saw him, *Swan*. Knows him; he is Master of the Robes, *Petow*. Saw one of the Lord Howards. Thomas, L. Howard, is a Privy Councillor. Witness has seen his hand to orders, *Watts*. Saw several papers subscribed with his name, *Smith*. Left out of Bill. (*ib.*, 17 Aug.)—On report: there being witnesses of several natures against L. Thomas Howard, the C. Justice Holt† is heard. Question, Whether there are two witnesses of his adhering to King James? *Holt, C. J.*: One witness proves him to be in office, another of his being in the Privy Council by seeing his name to orders. This seems to be somewhat short. Question put, Whether to agree with the Committee in their amendment to leave him out? Resolved in the affirmative. (MS. Min., 19 Aug. C. J., X. 269.)

†*Henry, Lord Dover*.—Saw in Dublin about six or seven weeks since a gentleman called Lord Dover, who, it was said, was to be a Colonel of a regiment of horse, *Nevill*. Heard Lord Dover was there, *Gun*. (Com. Book, 20 July.)—Saw one called Lord Dover in Sir Abel Ram's house in Ireland. Witness was informed by his Lordship's servants that it was Lord Dover, and that he came into Ireland with the King. Heard him order the servants to clean the house against next day, and

* *Swan*, who handed in a list of suspected persons in Ireland (Annex (af) below), prefaced his evidence by stating that he had come from Dublin Thursday last fortnight. No Protestant in Ireland was allowed to wear a sword, nor to go out of his parish. All Protestants were to appear at St. Stephen's Green the day he came away. *Petow* said that he had come out of Ireland Thursday three weeks ago with seven seamen in an open boat. (Com. Book, 17 Aug.)

† Included in *Swan*'s list (Annex (af) below).

‡ The Committee, after considering Clause 1, order that C. J. Holt or Justice Dolben should be desired to attend them. (Com. Book, 15 Aug.)

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say that he would have a bed set up in such a room for his Lady. He is an indifferent, gross man, with black hair, *Wetnall*. (*ib.*, 25 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Has gone to France three weeks since. Came over with the King. Is Colonel in the King's Horse Guards. Is a handsome man. The Guards are raising under him, *Swan*. Saw him, and knows him, having come with him from France with his master Mr. Baber, *Petow*. Saw one called Lord Dover, who, witness hears, is gone ambassador to France, *Watts*. Left out of Bill. (*ib.*, 17 Aug.)—On report: Evidence read, and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.) See also Annexes (*a*), (*d*), (*e*), (*h*), (*i*), and (*k*).

† *Sir Henry Bond*.—Saw him; he acted as Receiver-General, and witness knew him, *Smith*. He acted as Commissioner, *Vernon*. Saw him: one Fagan put in by the French Ambassador, acts as his clerk, *Gun*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Saw him and knows him, *Swan*. (*ib.*, 17 Aug.) See also Annexes (*c*), (*f*), (*g*), (*l*), and (*n*).

† *James, Duke of Berwick*.—Saw him, *Nevill*, *Murray*, *Vernon*. Saw him after he was wounded, *Bennet*. Saw one called the Duke of Berwick, *Smith*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Saw him, *Swan*. Saw one called the Duke of Berwick. (*ib.*, 17 Aug.)

Robert, Lord Hunsdon.—Left out of Clause 1 and put into Proclamation. (Com. Book, 30 July.)*—Case postponed. (*ib.*, 15 Aug.)—Knows him in Ireland, *Petow*. Saw him and knows him. Heard him say he had been with Lord Melfort to get money for the gentlemen that came from France, *Watts*.—Left out of Bill. (*ib.*, 17 Aug.)—On Report; evidence read and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.)

† *John, Earl of Melfort*.—Saw him, *Nevill*, *Murray*. Saw him and had his pass, *Vernon*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Knows E. Melfort, Secretary, *Swan*. Knew him in Ireland, *Petow*. (*ib.*, 17 Aug.)

† *Sir Alexander Fitton*.—Saw him with the Purse with the King on 24 March last, *Smith*. Saw him act as Lord Chancellor on the Bench, *Vernon*. Saw him on the Bench, *Nevill*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Knows him well, *Swan*. (*ib.*, 17 Aug.)

† *Sir Roger Strickland*.—Saw a gentleman 30 miles from Derry called Sir Roger Strickland, *Nevill*. Saw him, *Smith*. Had received money of him, *Gun*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Saw him at a Coffee house in Dublin after the King came to Dublin. Heard him called to and own his name. Saw him often, after the King came, at the Castle. Heard he was to be in employment, but did not hear that he was in any, *Smith*. Case postponed. (*ib.*, 15 Aug.)—Knows him, *Swan*. Knows him and heard he had a regiment; he went with the King towards

† Included in Swan's list (Annex (*af*) below).

* He was instanced by the Lords at the Conference on 2 Aug. as one concerning whom the Committee, upon their best inquiry, had been unable to learn whether he had been in Ireland or not. (C. J., X. 246.) No evidence, however, is recorded about him previous to the Conference.

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Derry, *Watts*. Left out of Bill. (*ib.*, 17 Aug.)—On Report, evidence read, and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.)

†*Sir Edward Herbert*.—Saw L. C. Justice Herbert at Church, who, it was said, was discontented, *Murray*. Saw him, but not in any trust, arms, or council, *Vernon*. A Petition of Rich. Reynell and others on his behalf (Annex (*n*) below) is read. (Com. Book, 20 July.)—*Mr. Sloane* desires to offer reasons for leaving him out of the Bill. (*ib.*, 29 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Knows him; he goes to Church, *Swan*. Knows him in Ireland, *Petow*. Knows him; he had no employment, *Watts*. Left out of Bill. (*ib.*, 17 Aug.)—On Report, evidence read, and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.)

†*Sir William Jennings*.—Saw him, *Murray*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Knows him, *Swan*. Left out of Bill. (*ib.*, 17 Aug.)—On report; evidence read, and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.)

†*Francis Plowden*.—Knew him, and saw him about 1 April, *Smith*. Knew him and saw him; he acted as a Commissioner, *Vernon*. Has known him; saw him act as a Commissioner, *Gun*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Knows him, *Petow*. (*ib.*, 17 Aug.)

†*Sir Patrick Trant*.—Knew him and saw him; heard he was Chairman to the Commissioners, *Smith*. Saw him; knows he acted as a Commissioner, *Vernon*. Saw him; has known him act as a Commissioner. He had also a Commission for a troop of horse, *Gun*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Knows him, *Swan*. Knows him in employment, *Watts*. (*ib.*, 17 Aug.)

†*John Trinder*.—Knew him, and saw him about 1 April, *Smith*. Knows him, and knows he acted as a Commissioner, *Vernon*. Saw him; has known him act as a Commissioner, *Gun*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Knows him in Ireland, *Swan*. Knows him in employment, *Watts*. (*ib.*, 17 Aug.)

†*Thomas Collins*.—Heard he was made Commissioner, *Smith*. He acted as Commissioner, *Vernon*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)*

†*Col. Dominic Sheldon*.—Saw him; knew him before and knew him to be in command, *Smith*. Saw him, *Bennet*, *Nevill*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation.—(*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Saw him in Ireland, *Swan*. Saw him; he was a Colonel of horse, *Watts*. (*ib.*, 17 Aug.)*

†*Lieut.-Col. William Mansell Barker*.—Saw him; knew he was Major to the Royal Regiment, *Smith*. Saw him in Lord Melfort's office, when he was to be despatched into the north, *Vernon*. (Com. Book, 20 July.)—Left in Bill. (*ib.*, 30 July, 15 Aug.)—Saw him, *Swan*. (*ib.*, 17 Aug.)

† Included in Swan's list (Annex (*af*) below).

* Collins, Sheldon, Bochier, and Buchan are not among the names proposed to be omitted by the Lords. (C. J., X. 269.) They were no doubt retained in the Bill on 17 Aug., though the fact is not recorded.

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† *Colonel Hugh Sutherland*.—Saw him, *Murray*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Saw him, *Swan*. Knows him in Ireland, *Petow*. Left out of Bill. (*ib.*, 17 Aug.)—On Report, evidence read, and amendment leaving him out agreed to. (MS. Min., 19 Aug. C. J., X. 269.)

Major Bochier.—Saw one Bochier, *Smith*. Saw Capt. Boshier, *Vernon*. (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)—Saw Major Bochier, who is Major to Luttrell, *Watts*. (*ib.*, 17 Aug.)*

† *Colonel Buchan*.—Saw Major-General Buchan. Heard that about 300 Protestants were killed by him at one time near the Cumber in County Down, *Bennet*. [*Smith* in Annex (o) below.] (Com. Book, 20 July.)—Left out of Bill and put into Proclamation. (*ib.*, 30 July.)—Case postponed. (*ib.*, 15 Aug.)†—Saw Col. Buchan, who had a regiment, *Watts*. (*ib.*, 17 Aug.)*

Captain Stafford.—Saw him, *Nevill*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Knew Francis Stafford, *Petow*. (*ib.*, 17 Aug.)

† *Mr. Fitzjames*.—Saw him, *Murray*, *Smith*, *Bennet*, *Vernon*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Saw him, *Swan*. Saw him in Dublin without employ, *Watts*. (*ib.*, 17 Aug.)

Lord George Howard.—Saw one called the Lord George Howard, *Murray*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Knows him; he is in Ireland, *Petow*. (*ib.*, 17 Aug.)

Sir John Sparrow.—Saw one called Sir John Sparrow; who is called Treasurer to the Household, *Murray*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Saw him and knows him well, *Petow*. He is Comptroller of the Household, *Watts*. (*ib.*, 17 Aug.)

† *Colonel Dorrington*.—Saw him, *Smith*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Knows him, *Swan*. Saw him; he was Lieut.-Col. of the Guards, *Watts*. (*ib.*, 17 Aug.)

Colonel Anthony Hamilton. Saw him, *Smith*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)

† *Col. Richard Hamilton*.—Saw him, *Smith*. (Com. Book, 20 July.)—Put into Proclamation. § (*ib.*, 30 July.)—Saw him in Ireland, and fitted a suit of armour to him, *Swan*. Saw him in employ in the Guards, *Watts*. Saw him take horse to go to the north, *Smith*. Added to Bill. (*ib.*, 17 Aug.)—On Report; evidence read, and amendment adding him agreed to. (MS. Min., 19 Aug.)

† *Captain Arundell*.—Saw him. Saw several assignments in the Treasury for his pay, *Smith*. (Com. Book, 20 July.)—Put into

† Included in *Swan*'s list (Annex (af) below).

* Collins, Sheldon, Bochier, and Buchan are not among the names proposed to be omitted by the Lords. (C. J., X. 269.) They were no doubt retained in the Bill on 17 Aug., though the fact is not recorded.

† On 15 Aug., after postponing the case of Col. Buchan, the Committee ordered that all the persons witnessed against that were not named in the Bill should be postponed. (Com. Book.) Buchan's name was in the Commons' Bill. It was no doubt the last of the list, as the names of L. Tyrconnel, Rich. Hamilton, Louis Doe, and L. Antrim were added immediately after it. See Lords' Amendments in C. J., X. 269.

§ The Abstract (Annex (o) below) adds that he was called Lieut.-General in the Declaration or Proclamation.

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Proclamation. (*ib.*, 30 July.)—Knows him, *Swan*. Saw him; he is a Captain in the Guards, *Watts*. (*ib.*, 17 Aug.)

Louis Doe.—Saw him, *Smith*. Saw him; he is Paymaster-General to the Army, *Bennet*. Mr. Louis Doe, of the Treasurer's Office, who manages the office under Sir H. Bond, had given witness orders for Ledger-books for the King, *Gun*.^{*} (Com. Book, 20 July.)—Added to Bill. (*ib.*, 30 July.)—Saw him in the Treasury, *Watts*. (*ib.*, 17 Aug.)—On Report, evidence read and amendment adding him agreed to. (MS. Min., 19 Aug.)

Lord Galmoy.—Saw him, *Bennet*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—Knows he has a regiment of horse, *Watts*. (*ib.*, 17 Aug.)

Lord Netterfield.—Saw him, *Bennet*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—He has a regiment of horse, *Watts*. (*ib.*, 17 Aug.)

Col. Ramsay.—Saw him, *Bennet*. (Com. Book, 20 July.) Put into Proclamation. (*ib.*, 30 July.)

Sir Maurice Eustace.—Saw Sir Maurice Eustace of Castle-Martin. *Bennet*. (Com. Book, 20 July.)—Put into Proclamation. (*ib.*, 30 July.)—He has a regiment of foot, *Watts*. (*ib.*, 17 Aug.)

Lord Antrim.—Saw him; he commanded the garrison at Carrickfergus, *Bennet*. (Com. Book, 20 July.)—Added to Bill. (*ib.*, 30 July.)—Ordered, that *Smith*, who gave evidence against L. Antrim,[†] attend at the next meeting. (*ib.*, 12 Aug.)—Saw him; he has a regiment, *Watts*. Added to Bill. (*ib.*, 17 Aug.)—On Report; evidence read. and amendment adding him agreed to. (MS. Min., 19 Aug.) C. J., X. 269.

†*Lord Drummond*.—Saw one called Lord Drummond, the Chancellor of Scotland's son, *Vernon*. (Com. Book, 20 July.)—Knows him well, *Swan*. (*ib.*, 17 Aug.)

Lord Dungan [? Dungannon].—Saw him in arms, *Bennet*. (Com. Book, 20 July.)

Mr. Bellasis.—Knew him. *Petow*. (Com. Book, 17 Aug.)

Mr. Bellingham.—Knows him and saw him. *Petow*. (*ib.*)

Major Clifford.—Knows him well. *Petow*. (*ib.*)

Mr. Fielding.—Knows him and saw him. (*ib.*)

†*Sir Archibald Kennedy*.—Knows him. *Swan*. (*ib.*)

†*Col. Macdonnell*.—Knows him. *Swan*. (*ib.*)

Mr. Oldfield.—Knew him. *Petow*. (*ib.*)

†*Col. Powell*.—Knows him. *Swan*. (*ib.*)

†*Earl of Seaforth*.—Saw him in Ireland. *Petow*. (*ib.*)

†*Bruno Talbot, Chancellor of Exchequer*.—Saw him. *Swan*. (*ib.*)

Richard, Earl of Tyrconnel.—Saw him in Ireland. He was Steward of the Household to King James, and had a regiment of foot and horse, *Watts*. Knew him; he carried a sword before the King. He is made a Duke, *Smith*. Added to Bill. (*ib.*)—On Report, evidence read, and amendment adding him to Bill agreed to. (MS. Min., 19 Aug.) C. J., X. 269.

†*Sir William Wallis* [Wallace].—Knows him well. *Swan*. (*ib.*)

Mr. Wetherington.—Knew him in Ireland. *Petow*. (*ib.*)

There is a reference, lastly, to "Lord Salisbury's two brothers," whom *Petow* stated that he knew in Ireland, and that they kept company with

* *Gun*'s evidence is not given in the Abstract (Annex (o) below).

† No such evidence is found recorded. The Abstract (Annex (o) below) ends with Lord Antrim.

† Included in *Swan*'s list (Annex (af) below).

his master. (*ib.*) The Bill finally dropped in the Commons; but was revived on 23 Dec. 1690.]

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For papers connected with this Bill as revived the following year, see under date 23 Dec. 1690.

Annexed:—

- (a.) 18 July. Petition of Sarah Jamett, the widow and administratrix of Rene Jamett, her late husband, deceased. Henry, Lord Dover, owed Petitioner's husband, at his death, 30*l.* for wages, which is still unpaid. Prays that the Bill, for forfeiting Lord Dover's estate, may contain a clause for payment. *Endorsed* Mrs. Jamett, servant to the Earl of St. Alban, her Petition. [Delivered to the Committee on the Bill this day. Com. Book, 18 July. On 16 Aug. *Mr. Folkes* was ordered to wait on C. Justice Holt with nine Petitions delivered to the Committee, and with a copy of the Bill. (*ib.*, 16 Aug.)]
- (b.) 18 July. Copy of preceding.
- (c.) 18 July. Petition of several of the creditors of Sir Henry Bond. Pray that the Bill for forfeiting Sir Henry Bond's estate may provide for payment of their debts. *Signed* L. Cranmer, M. Bond, W. Compton, James Boyleau, Rowland, Evens, Tho. Bond, Will. Bond, Mezier, Mathews, La Garde, "and several others." [Delivered to the Committee on the Bill this day. Com. Book, 18 July and 16 Aug.]
- (d.) 18 July. Petition of the Creditors of the Lord Dover. Petitioners, who are poor tradesmen and workmen, gave credit to L. Dover for goods and work. Pray that the Bill may provide for payment. *Signed* John Bate, Thomas Fraiser, Robert Blake, Peter Du Fresnoy, Affrica Hall, John Channeau, John Scidemore, John Spicer, John Arlington. [Delivered to the Committee on the Bill this day. Com. Book, 18 July and 16 Aug.]
- (e.) 18 July. Petition of Cicily Kidwell, Ann Jonye, and John Arthington, three of the servants of Henry, late Earl of St. Alban, deceased. The late Earl died suddenly without leaving them the annuities he had promised; but his trustees, Lord Jermyn and Lord Dover, knowing his intentions, have given them a yearly allowance, as old servants. Pray that this allowance may be provided for in the Bill. [Delivered to the Committee on the Bill this day. Com. Book, 18 July and 16 Aug.]
- (f.) 18 July. Petition of David Rowlands, Esq. Sir Henry Bond became bound to Petitioner in 1688 for repayment of a loan of 1,000*l.* with interest. Prays that the debt may be provided for in the Bill. [Delivered to the Committee on the Bill this day. Com. Book, 18 July and 16 Aug.]
- (g.) 18 July. Petition of Charles de la Garde, Gent. Sir Henry Bond became bound to Petitioner in 1686 for repayment of a loan of 525*l.*, and in 1688 for another 500*l.*, which sums still remain unpaid. Prays that the debts may be provided for in the Bill. [Delivered to the Committee on the Bill this day. Com. Book, 18 July and 16 Aug.]
- (h.) *Undated.* Petition of Thomas, Lord Jermyn. Henry, Lord Dover, gave a bond to Petitioner in 1683 for repayment of a loan of 1,000*l.* with interest, which loan is still unpaid. Prays that the debt may be provided for in the Bill. [See Com. Book, 16 Aug.]

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- (i.) *Undated.* Petition of George Raleigh, Esq., and Judeth, his wife, daughter of Thos. Jermyn, Esq., deceased. The late Thos. Jermyn left by will to the Petitioner, Judeth, 1,000*l.* for her portion, which, by agreement with her brother, the late Henry, Earl of St. Alban, undertook to pay during his life, and the same was left in the Earl's hands, and after his death in the hands of Henry, Lord Dover, one of his trustees. Prays that provision may be made for its payment in the Bill. [See Com. Book, 16 Aug.]
- (k.) *Undated.* Petition of Andrew Card, Gent. Henry, Lord Dover owes Petitioner upwards of 80*l.* on an account. Prays that the debt may be provided for in the Bill. [See Com. Book, 16 Aug.]
- (l.) *Undated.* Petition of Andrew Card, Gent. Sir Henry Bond, Bart., owes Petitioner upwards of 20*l.* on an account. Prays that the debt may be provided for in the Bill. [See Com. Book, 16 Aug.]
- (m.) *Undated.* Petition of James Boyleau, Gardener. Petitioner lent his savings, amounting to 100*l.*, to Sir Henry Bond, Bart., and took his bond for the same in 1685. The money is still unpaid. Prays that the debt may be provided for in the Bill. [See Com. Book, 16 Aug.]
- (n.) 20 July. Certificate, addressed to the Committee, that the persons signing had credible information by letters and otherwise from Ireland that Sir Edward Herbert is in no way active there either in arms or counsels of the late King James, but lives privately very retired, and as one out of favour and employment or business, and boards himself, with only one servant, in a private Protestant family. *Signed* Rich. Reynell, James Hamilton, P. Savage, James Sloane, Robert Rochfort, and John Osborne. [Offered to the Committee, and read this day. On the 29th *Mr. Sloane* spoke on Sir Edward's behalf before the Committee. Com. Book of dates.]
- (o.) 30 July. List of persons about whom evidence was taken, with abstract of evidence given about them by witnesses examined by the Committee. [Ordered to be prepared the 29th by the Clerk, and delivered to the Committee this day. Com. Book of dates.]
- (p.) 12–16 August. Lords' Amendments made in Committee on August 12, 15, and 16. [Com. Book of dates: They do not include the amendments in the 1st Clause, which were made finally on Aug. 17.]
- (q.) 15 August. Note of names postponed in Clause 1 this day. [Com. Book.]
- (r.) 16 August.—Amended * clause marked A. as follows:—"And that all and every the manors, messuages, lands, tenements, rents, reversions, remainders, possessions, rights, conditions, interests, offices, fees, annuities, and other hereditaments, leases for years, and chattels real, and also all and every the goods, debts, and chattels personal whatsoever of them the said William, Marquess of Powis [Thomas Howard, Henry, Lord Dover] and Sir Henry Bond, James, Duke of Berwick, [Robert Lord Hunsdon], John, Earl of Melfort, Sir Alexander Fitton, [Sir Robert Strickland, Sir Edward Herbert, Sir William Jennings],

* The additions are shown by italics, the omissions by square brackets.

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Francis Plowden, Sir Patrick Trant, John Trinder, Thomas Collins, Colonel Dominick Sheldon, Lieut.-Col. William Mansell Barker, [Col. Hugh Sutherland], Major Bochier, and Col. Beaucan, *Richard, Earl of Tyrconell, of the Kingdom of Ireland, Colonel Richard Hamilton, Louis Doe, and Lord Antrim, of the Kingdom of Ireland*, which they or any of them, or any other person or persons to their or any of their uses or in trust for them or any of them had the [five and twentieth] *twelfth* day of March, *being the day of the late King James the Second his landing in Ireland*, shall from and after the said four and twentieth day of October in the year of our Lord one thousand six hundred eighty and nine, be deemed vested and adjudged to be in the actual and real possession of your Majesties without any office or inquisition thereof hereafter to be taken or found." *Endorsed: 'The Clause instead of the Seizing Clause. C. J., X. 269. In extenso. [Substituted by Committee this day for a Clause in the original Bill beginning 2 sk. 34 line. Com. Book, 16 Aug.]*

- (s.) 16 August. Amended* clause, marked B., as follows:—
 "And whereas [divers of] the offenders before in this Act named or [many] *some* of them have *before the twelfth day of March* for money or other valuable considerations, granted several small annuities and pensions, which are secured some by Bond and others by Notes only, and have also contracted several great debts to poor tradesmen and others, some of which debts are secured [only] by Bonds, and others remain only upon such tradesmen's *and others their* books, all which said several pensions, annuities, and debts, which are [only] so secured *and owing* as aforesaid, will by the strict rules of the law be lost, and may be to the ruin of many of the persons to whom the same are granted or owing, unless provision be made therein by this present Act; For prevention whereof, Be it further enacted by the authority aforesaid, That all and every the goods and chattels personal, and the rents, issues, and profits of the manors, lands, tenements, and hereditaments of every of the said respective offenders shall in the first place be applied for and towards the payment of all and every such annuities, pensions, and debts of the said offenders, [as aforesaid], as are and be so granted, owing, and secured as aforesaid; And the Barons of Their Majesties' Court of Exchequer may and are hereby authorised and directed to order the payment of all and every such pensions and debts out of the goods and chattels personal and the rents, issues and profits of the said manors, lands, and hereditaments of such of the offenders aforesaid by whom such annuities or pensions were granted, or debts owing in the hands of any Sheriff or Sheriffs, which shall at any time hereafter be chargeable with or accountable for such goods and chattels or rents and profits, before the same shall be answered and paid into their said Majesties' Receipt of Exchequer, so as all such Bonds or Notes, whereby such debts, annuities, or pensions are to be secured, and also the particulars whereby such tradesmen's *and others their* debts did grow due, be entered and enrolled in their Majesties' Court of Exchequer before the *said* twenty-[ninth] *fourth* day of [September] *October* 1689, and not other-

* The additions are shown by italics, the omissions by square brackets.

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wise ; And after payment of all such debts and annuities as aforesaid, shall be applied for and towards the present maintenance and relief of such of your Majesties' subjects of the Kingdom of Ireland, being of the Protestant religion, who are in the Kingdom of England for and during the time that the said Rebellion shall continue and [that the persons thereby to be relieved shall reside within this realm] *until they shall be restored to their respective estates*, anything before in this Act contained or any law to the contrary notwithstanding. *Endorsed.* "A clause for personal debts, etc." C. J., X. 269-70. *In extenso.* [Drawn by C. J. Holt, and added to Bill this day. See Note to preceding paper.]

(t.) 16 August.—Amended Clause marked C., as follows:—Provided always and be it enacted by the authority aforesaid, That no conveyance, assurance, grant, bargain, sale, mortgage, charge, lease, assignment of lease, or other grant, estate, interest, trust, or limitation of any use or uses of or out of any manors, lands, tenements, offices, or hereditaments, nor any judgment, statute, or recognizance had, made, acknowledged, suffered, or executed to any person or persons, bodies politic, or corporate, by any of the offenders before in this Act mentioned, or to be attainted thereby, or suffer by means thereof, or by any person or persons claiming by, from, or under them or any of them before the *said twelfth day of March*, for money bona fide to them or any of them, their or any of their use or uses paid or lent or other valuable consideration, or in trust for the payment of the just debts of any of the said offenders, *contracted and due before the said twelfth day of March*, nor any conveyance, assurance, grant, or estate made or given by any person or persons to any of the offenders aforesaid in trust or for the benefit of any person or persons (not being any of the offenders aforesaid) or in trust for any bodies politic or corporate, shall be impeached, defeated, made void or frustrated by this present Act, or by means thereof, or by any of the convictions and attainders thereby made or to be made ; but that the same shall be held and enjoyed by the purchasers, grantees, mortgagees, assignees, lessees, cestuy que use, cestuy que trusts and every of them, their heirs, successors, executors and assigns respectively, as if this Act had not been made, and as if the said offenders or any of them had not thereby been convicted or attainted, anything contained in this Act to the contrary notwithstanding. And saving always *to the King and Queen's Majesties* and to all and every person and persons, bodies politic and others, their respective heirs, successors, and assigns, all such right, title, and interest in law and equity as they or any of them now have or ought to have of, into, or out of any the manors, lands, tenements, and hereditaments of the offenders aforesaid or any of them, not being in trust for any of the said offenders, nor derived by, from or under the said offenders or any of them since the *said twelfth day of March*, this present Act or the convictions and attainders thereby or by means thereof made or to be made to the contrary in anywise notwithstanding. *Endorsed.* The Saving Clause. [On 25 July Mr. Folkes proposed that the Proviso in the Attainder, Act. 12 Car. II.,* with the addition of some words, made in the margin, might be added to the Bill. He prayed that there might be a saving

* See the Act for the Attainder of the Regicides 12 Car. II. c. 30. § ii., providing for the non-impeachment of conveyances.

for all estates for which the persons attainted were entrusted, and also that the forfeitures might relate from the time the treason was committed. He then left his Proviso and the said amendment with the Committee. On 16 Aug. the above Clause, together with the next one (Annex *u*), was substituted for the portion of the Bill extending from Skin 5, l. 14, to Skin 6, l. 20, and the L. C. Justice was directed to draw a Clause as to fraudulent trusts, for which see Annex *w*. (Com. Book). These three clauses are given, but in a condensed form, among the other amendments of the Lords in C. J., X. 269.]

(*u*.) 16 Aug. Amended draft of Proviso marked D. as follows:—Provided always and be it enacted that if any person or persons shall challenge or claim any debt as due or owing from any of the said offenders, or any trust, right, title, or interest in, or to, or out of any of the manors, lands, or tenements of any of the said persons attainted, or that shall be attainted by this Act, and judgment shall be given upon a verdict or demurrer against such person or persons so claiming, he or they shall [forfeit] *pay* to our Sovereign Lord and Lady the King and Queens' Majesties, *double costs*, [to the recovery whereof] *for which* judgment shall be given in the Court of Exchequer where such claim shall be made. And be it further enacted, That every person or persons that shall wittingly and willingly [certify] *put in ure or set up* any fraudulent gift, grant, conveyance, or bond *made by any of the persons intended to be attainted by this Act*, or shall fraudulently claim any debt as due or owing from any of the [persons by this Act intended to be attainted] *said persons*, which is not *bonâ fide* due and owing, shall incur the penalty of [one year's value] *the value of the third part** of such lands and tenements [of which such claim shall be made or set up] *claimed by such gift or conveyance* and [likewise] *the third part of the sum or value* of the [bond or] debt or *duty* so claimed respectively, the one moiety thereof to the King and Queens' Majesties, the other moiety to him or them who shall sue for the same in any of their Majesties' Courts of Record by Bill, Plaint, or Information, wherein no essoign, protection, or wager or law shall be allowed.—Two papers in the same handwriting as Annex (*w*). [See note to preceding paper.]

(*w*.) Draft clause marked E. as follows:—And be it enacted by the authority aforesaid that if any person whatsoever shall discover any fraudulent conveyance or settlement made by any person that shall be attainted by this Act, such person so discovering shall have for his reward the value of the fifth part of the lands, tenements, goods, or chattels whereof such fraudulent settlement or conveyance was made, to be allowed to him upon his claim to be made in their Majesties' Court of Exchequer. [See note to Annex (*t*). The handwriting seems to be that of C. J. Holt, by whom the Clause was ordered to be drawn.]

(*x*.) 17 Aug. Clause marked G. as follows:—And whereas William Whitmore the elder, late of Balmes, in the county of

* Amended at first to read as follows: "the penalty of the third part of the value of such lands and tenements of which such conveyance, gift, or grant shall be made and set up, and likewise the third part of the sum of such bond or debt so claimed."

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Middlesex, Esq., by indentures of lease and release, bearing date the 26th and 27th days of November 1677, did, amongst other things, convey and assure several manors and lands in the counties of Essex and Middlesex unto or to the use of William, Marquess of Powis, William, Earl of Craven, Charles, Lord North and Grey, Francis, Lord Guildford, and St. Elias Hervey, Knt. and Bart., and their heirs, in trust to be sold, and the moneys arising by such sale to be equally distributed to and amongst the sisters of him the said William Whitmore then living, their children and grandchildren; and the children and grandchildren of Dame Eliz. Wild, another of the sisters of him the said William Whitmore, deceased (other than and except Geo. Wild therein named), and the issue of him, the said George (other than Elizabeth Wild, his daughter); which said Francis, Lord Guildford and Sir Elias Hervey afterwards released their said trust, and the said Marquess of Powis, Earl of Craven, and Lord North and Grey, the three other trustees, have sold the said manors and lands, and disposed the moneys arising by such sales according to their said trusts (other than and except the sum of 3,250*l.*, part of the sum of 3,750*l.*), which was the parts and shares of William Whitmore, Katherine Whitmore, Ann Whitmore and Dorothy Whitmore, being the grandchildren of the said Dame Elizabeth Weld by Ann Whitmore her daughter, in the moneys so raised, which said 3,250*l.* was not paid to the said William Whitmore, Katherine Whitmore, Ann Whitmore and Dorothy Whitmore, they being all infants under the age of 21 years; and the said 3,250*l.* is in the hands of the said William, Marquess of Powis, and so will be inevitably lost unless provided for in this present Act; For prevention whereof, Be it further enacted and declared by the authority aforesaid, that all and every the goods and chattels and the manors, lands and hereditaments of the said Marquess of Powis shall be and is hereby charged with and made liable to the payment of the said 3,250*l.* to the said William Whitmore, Katherine Whitmore, Ann Whitmore and Dorothy Whitmore, their Executors and Assigns, with interest from the time the same 3,250*l.* was paid to him the said Marquess; And the Barons of their Majesties' Court of Exchequer may and are hereby authorized and directed to order the payment of the said 3,250*l.* and interest as aforesaid unto the said William Whitmore, Catherine Whitmore, Ann Whitmore and Dorothy Whitmore out of the said goods and chattels personal and the said manors, lands and hereditaments of the said Marquess of Powis and rents, issues and profits thereof in the hands of any Sheriff or Sheriffs or other Officer or Officers, which shall at any time hereafter be charged with or accountable for such goods and chattels, or rents and profits, before the same shall be answered and paid into their said Majesties' Receipt of Exchequer; And that previous to and before any other payments or applications to be made in pursuance of this Act; anything before in this Act contained or any law to the contrary notwithstanding. *Endorsed* Earl of Craven and L. North and Grey. [On 16 Aug. *C. Justice Holt* was directed to draw a Clause in reference to Mrs. Whitmore's Petition, then read. On the 17th this Clause was ordered to be added to the Bill. (Com. Book.) The substance of it is given among the Lords' Amendments in C. J., X. 269.]

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(y.) 17 August. Amended Proviso marked H. as follows:—Provided that nothing in this Act contained shall be construed or taken to avoid one Indenture of Assignment, dated on or about the 21st January 1688, whereby two houses and some stables in or near Piccadilly are assigned by Henry, Lord Dover, Thomas, Lord Jermyn, Henry Poley, Thomas Coell, and Martin Folkes to James Ferne in trust for Edward Horton, for that the same Indenture was not sealed by the said Lord Dover *or his attorney* till the fifteenth day of March last; but that the said Indenture of Assignment shall be and remain of such and the same force and effect as the same was before the passing of this Act, anything herein contained to the contrary notwithstanding. [16 Aug. Agreed that Mr. Folkes bring in a Proviso to-morrow morning relating to 600*l.* paid to Mr. Horton about the 15th March by L. Dover. 17 Aug. (morning meeting). The Clause read and ordered to be added at the end of the Bill. (Com. Book.) The Clause, however, is not among the Lords' Amendments in C. J., X. 269, and must, therefore, have been ultimately rejected, either at the afternoon meeting of the Committee on 17 Aug., or by the House on report, though the fact is not recorded.]

(z.) Engrossment of last Proviso, similarly amended.

(aa.) 17 Aug. Proviso as follows:—Provided always and be it enacted by the authority aforesaid, that if any of the persons who would have been attainted by this Act, if he had not rendered himself in such manner and before such person as is hereby appointed and directed, shall render himself in England according to the purport and meaning of this Act, that then he shall be committed to safe custody, there to remain until he shall become bound in a Recognizance with two sufficient sureties before their Majesties' Chief Justice of the Court of King's Bench for the time being, to be of the good behaviour for the space of one whole year then next following, and if he shall render himself in Ireland, then he shall likewise be committed to safe custody, there to remain until he shall be bound in a bond to the Commander-in-Chief with two sufficient sureties for his good behaviour for the space of a year next ensuing, and from and after such being bound in bond and recognizance respectively, the said person that hath surrendered himself shall be and is hereby pardoned, indemnified, and discharged of the treason and treasons mentioned in this Act. *Noted*: Rejected. [On 16 Aug. *C. J. Holt* was ordered to draw a clause to indemnify the persons named in this Act to be attainted thereby, that should come by 24 Oct., from all treasons in adhering to King James in Ireland; and he brought in the above Clause on the 17th, which was rejected by 13 votes to 9. (Com. Book of dates.) It was offered again on Report, but again rejected. (MS. Min. 19 Aug.)]

(ab.) Paper as follows: "In the particularising of Estates forfeitable, it is humbly offered that there may be added trusts, conditions, powers, rights of entry and rights of action, and that no person be pardoned but by Act of Parliament, or grants made of their estates." [On 18 July, L. Massareene and the other Irish Gentlemen who attended the Committee said that by the statute 17 & 18 Car. II. no one is to be pardoned but by Act of Parliament.]

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(*ac.*) 17 Aug. Paper containing two proposed additions to the Bill. The first, which is struck through and noted as rejected, is as follows:—"Page 8 (*sic*).^{*} All and singular manors, messuages, lands, tenements, rents, reversions, remainders, portions, rights of entry and action, trusts, conditions, powers, interests, offices, fees, annuities, and all other hereditaments, goods, chattels, debts and other things of whatsoever names, natures, or qualities they be, which they or either of them had, or any other person or persons to their or any of their use, or in trust for them, or any of them, and shall suffer and forfeit etc. as in the draft."—The second amendment, which is noted to be added at the end of the Bill,[†] consists of a clause as follows: "And be it further enacted by the authority aforesaid that no person or persons whatsoever of the Protestant religion shall be subject or liable to any loss, forfeiture, or prejudice in estate, office, person, or otherwise, for or by reason of his or their absence out of the Kingdom of Ireland without license, or otherwise at any time or times since the fifth day of November 1688, or for non-payment of rent or any other duty due or payable to their Majesties or the Crown since the said fifth day of November until such time as the said Kingdom of Ireland shall be reduced to their Majesties' obedience, but shall be absolutely discharged and acquitted from all rents and duties so incurring." [On 18 July, L. Massareene and the other Irish Gentlemen proposed that no Protestant that has come hither since the 5th of November may forfeit any estate in Ireland for want of paying quit rent. On 20 July they offered amendments and clauses in writing. On 29 July *Mr. Folkes* made exceptions to some words in the amendments offered. On 15 Aug. the words formerly proposed by L. Massareene, Sir Rich. Reynolds and other the Irish gentlemen to be added in Sk. 2 l. 31 were read, and agreed not to be added. (Com. Book.)]

(*ad.*) Fair copy of latter portion of preceding, viz. "And be it further . . . so incurring." Appended to preceding.

(*ac.*) 17 Aug. Engrossed clause as follows: "And be it enacted that no manors, lands, tenements, or hereditaments, in the realm of Ireland shall from henceforth pass or change from one to another whereby any estate of inheritance of freehold or otherwise shall be made or take effect in any person or persons, or any use thereof be made by reason of any bargain and sale or other disposition whatsoever, except the same be made by deed or deeds, writing or writings indented, sealed, and inrolled in one of the King's Four Courts of Record at Dublin within six months after the making and perfecting the same. Provided nevertheless, and be it enacted, That this Act nor anything herein contained extend to any manors, lands, tenements, or

^{*} This reference is probably to a copy of the Bill. The rejected amendment that follows, for insertion in Skin 2, l. 31, of the Commons' Engrossment, occurred at the end of Clause 1, which ended with Skin 2, l. 34. The Com. Book of 15 Aug. has the following amendments, which are struck through: "Skin 2, l. 31, leave out the words ('suffer and'); and line 32, leave out [?] from] the word ('forfeit'), and insert the Paper marked." This is probably the Paper referred to.

[†] This Clause is given, with the other amendments finally agreed to by the Lords, in C. J., X. 269, *in extenso*. It is no doubt the clause referred to in MS. Min. 19 Aug. on Report, "A Clause desired by the Irish Gentlemen is read and agreed to."

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hereditaments lying or being within any city, borough, or town corporate, or other place in Ireland, wherein the Mayor, Recorder, Chamberlain, Bailiff or other officer or officers have authority, or have lawfully used to inroll any evidences, deeds, or other writings within their respective precincts or limits." *Endorsed*: Enrolled Deeds 19. [This appears to be the Clause referred to in the following extracts. 18 July. L. Massareene delivers in a Clause to be added to the Bill.—16 Aug. The Clause brought in by the Irish Gentlemen some time since, to be added at the end of the Bill, is read and ordered to be further considered to-morrow.—17 Aug. (Morning meeting.) The Clause brought in by L. Massareene and debated last night is read and rejected. Ordered to report that, it being a thing of consequence, the Committee thought fit to refer it to the House. (Com. Book of dates.) Beyond this nothing is recorded; but it must have been ultimately rejected, not being among the Lords' final amendments in C. J., X. 269.]

(*af.*) 17 Aug. Paper noted "Mr. Swan's Note of persons in Ireland. These persons came with King James to Dublin and are there the last of July 1689." It gives a list of 35 persons, including, besides those whose names are marked in the note to the first paper above, the following:— —. Bidle, Esq., Capt. Trevanion, Capt. Coney, Col. Clifford, Capt. Talbot, and Col. Maxwell.

130. July 27. Clandestine Marriages Bill.—Amended * draft of an Act disabling Minors to marry without the consent of their fathers or guardians, and against their untimely marrying after the decease of their fathers, *and for preventing all clandestine marriages for the future.* Whereas Minors, [having or expecting considerable portions or estates real or personal], are daily subject to be inveigled or forced away from their fathers or guardians, and thereupon do contract matrimony with persons unsuitable before they are of years capable to dispose of themselves with that discretion which is requisite, and notwithstanding the severities of former laws, yet there being no provision to annul such marriages, wicked persons presume they shall afterwards obtain the consent and reconciliation of friends, and are thereby encouraged to the said evil practices; [For prevention whereof for the future, and to frustrate all untimely marriages by minors after the decease of their parents by the contrivance or consent of their guardians,] *And whereas clandestine marriages are and have been found to be of very pernicious consequence, and have given occasion to many wicked practices and many disorders in families,* Be it enacted etc. That from and after the *three and twentieth day of October one thousand, six hundred, eighty-nine*, it shall not be in the power of any son being under the age of [eighteen †] *one and twenty* years, nor in the power of any daughter being under the age of [sixteen †] *eighteen* years to marry him or herself, or to make any matrimonial contract of any kind whatsoever, except his or her father, in case he be then living, or his or her guardian or guardians, after the decease of the father, *or the major part of them*

* The additions to the draft are shown by italics, the omissions by square brackets. The alterations made by the Judges in the original draft are specially noted. The other alterations were made in Select Committee.

† The ages of 18 and 16 were substituted by the Judges for 21 and 18 as in the original draft. (MS. Min. 14 June 1678.) The latter numbers were restored, as marked above, in Select Committee.

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*if more than two,** shall be present and consenting thereunto, or shall have given consent by writing signed in the presence of two or more credible witnesses precedent to such marriage; but all such minors without such consent or being present are hereby made incapable and disabled to marry or make any matrimonial contract; and all marriages and matrimonial contracts that after the *said twenty-third day of October* shall be made without such consent or being present as aforesaid, shall be, and are hereby enacted to be null and ipso facto void to all intents and purposes whatsoever.

And be it further enacted that after the death of the father [and mother],* it shall not be in the power of any son of such deceased father [and mother],* being under the age of [sixteen] *eighteen* years, to marry himself or make any matrimonial contract although with the consent of his guardian or guardians; nor shall it be in the power of any daughter of such deceased father [and mother],* being under the age of [fourteen] *sixteen* years, to marry herself or make any matrimonial contract, although with the consent of her guardian or guardians, but that notwithstanding such consent, [a pretended] *the** marriage of such minors after the death of their fathers [and mothers]* under the said respective ages of [sixteen] *eighteen* years, if sons, and [fourteen] *sixteen* years if daughters, shall be and are hereby enacted to be null and ipso facto void to all intents and purposes whatsoever.

And be it further enacted that in case of any pretended marriage had by such minor against the true intent and meaning of this Act, no right or title to any goods or chattels, or to any dower or tenancy by the courtesy, or to demand any letters of administration, or any benefit of any law or custom whatsoever shall accrue by reason of any such pretended marriage and it shall and may be lawful for the father or guardians or any other friend of any such minor to prosecute in the name of any such minor or in his own name in any ecclesiastical court where the matter may be cognisable, any cause of jactitation of marriage or other suit whereby to have such pretended marriage declared null and void, and without any let or contradiction of any such minor during such time as such minor shall [be] continue* under the respective ages [of one and twenty and eighteen years] *wherein he or she are disabled to contract matrimony according to the true intent and meaning of this Act.**

And be it further enacted that if any guardian shall be any way contriving, privy, or consenting to any such pretended marriage or matrimonial contract of any minors contrary to the true intent and meaning of this Act, That thereupon such guardian shall [lose and forfeit all his] *be and is hereby declared for ever incapable of holding or enjoying any employment, profit, place, or office, either ecclesiastical or civil, and shall also forfeit the value of one-third part of the estate, real or personal, of the minor, to whose pretended marriage he hath been so contriving or consenting, and that the right, title, and interest to the custody or guardianship of any such minors [and the same] shall remain and be in the other guardians or guardian that was not contriving, privy, or consenting to such marriage, if there be any such, and if there be none such, then the said custody and guardianship shall come and be, and is hereby vested in the next of kin to such minor that is of full age, to whom the estate of such minor cannot immediately descend by course of inheritance, [and shall also forfeit] the value of the said third part to be recovered in any of [his Majesty's] their Majesties* Courts at West-*

* Alterations made by Judges in the original draft.

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minster by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law shall be allowed, the one moiety to [the King's Most Excellent Majesty, his heirs and successors]† *the poor of the parish where the guardian or guardians so offending shall reside, which said moiety to be appropriated to the orphans and poor of the said parish, to the putting them apprentice,* and the other moiety to the informer.

And be it further enacted that in case any domestic or menial servant shall take upon him or her to make any pretended marriage or matrimonial contract between him or herself and any the children or pupils of his or her master or mistress during such their minority, [and] *or if any such servant shall seduce or betray, or be knowingly aiding and assisting to inveigle such child to marry any other,* in such manner as that the same is by this Act declared to be invalid, null, and void, that then and in every such case, such servant, being lawfully convicted thereof, shall be committed to prison, there to remain by the space of three years in some House of Correction in the County where the said offence was committed, without bail or mainprise, and there to be kept to hard labour, and receive correction in the same manner as rogues and vagabonds ought to have by course of law, [unless for his redemption he shall pay or sufficiently secure the payment of the sum of (blank), and in case he shall pay or sufficiently secure the said sum, then to be committed to the common goal, there to remain for the space of three years, without bail or mainprise.]

And be it further enacted by the authority aforesaid, That whosoever, not being a household servant in the family,‡ shall *make any such pretended marriage or matrimonial contract, or be knowingly aiding or assisting to the same, or shall inveigle and marry any such minor, he or she so marrying [a minor] or being knowingly aiding or assisting to the same,* shall forfeit [(blank), one-third part] *one-third part of what he was really worth at the time the fact was committed, one moiety* whereof shall be to the informer, and the other [two parts to the King's Majesty]§ *moiety to the uses of the poor as the other forfeitures are directed,* to be recovered by action of debt, bill, plaint, or information in any of [his Majesty's] *their said Majesties** Courts of Record, wherein no essoign, protection, or wager of law shall be allowed, *and shall also suffer three years' imprisonment in the common goal without bail or mainprise.**

And be it further enacted by the authority aforesaid,|| [That if any person having or pretending to have power to grant licenses of marriage shall wilfully and knowingly grant license for marriage to be had contrary to the tenor and purport of this Act, every such person for the first offence shall forfeit the sum of (blank), whereof one moiety to [the King's Majesty] *their said Majesties,** and the other moiety to him or them that will sue for the same by action of debt, bill, plaint, or information, in any of [his Majesty's] *their said Majesties** Courts of Record, wherein no essoign, protection, or wager of law shall be allowed, and for the second offence shall likewise forfeit the said

* Alterations made by the Judges in original draft.

† The Judges had substituted, for these words, "their said Majesties their heirs and successors," in the original draft.

‡ The Judges had at first added here the words "and being or the age of 21 years or above that age," and then struck them out.

§ The Judges had substituted here the words "to their said Majesties."

|| Here is marked for insertion Paper † (Annex a below).

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sum of (blank), to be recovered in like manner† and shall also lose and forfeit his office by reason *or pretence*‡ whereof he was empowered to grant licenses of marriage, and all other ecclesiastical promotions, and be disabled for ever after to hold that or the like office, or any other ecclesiastical *or civil office*,§ benefice, *place*,‡ or promotion whatsoever,§ [or to be Chancellor, [or]* Commissary, *official or surrogate** to any Bishop or other ecclesiastical person, or to any* Judge of any Ecclesiastical court. And if any person or persons being or pretending to be in Holy Orders, shall wilfully and knowingly officiate in such marriage,|| every such person for the first offence shall forfeit the sum of (blank), whercof one moiety to the King's Majesty and the other moiety to him or them that will sue for the same, to be recovered by action of debt, bill, plaint, or information in any of [his Majesty's] *their said Majesties** Courts at Westminster, wherein no essoign, protection, or wager of law shall be allowed; and for the second offence shall likewise forfeit the sum of (blank), to be recovered in like manner, and shall also lose and be deprived of all his ecclesiastical benefices and promotions whatsoever, and they shall be ipso facto void as if he were naturally dead, *and he is hereby made incapable of any ecclesiastical benefice, cure, or promotion whatsoever for the future*.* Provided always that no lapse shall incur upon any avoidance made by this Act until six calendar months after due notice given to the patron of such avoidance. And if any person shall maliciously and wilfully personate the calling or order of a minister, priest, or deacon, not being in Holy Orders, [according to the rites of the Church of England] *by lawful authority, or pretending to Holy Orders by virtue or colour of some imposition of hands, or other ecclesiastical ordination*,* and shall officiate in any such or any other marriage, and be thereof lawfully convict, every such person shall for the first offence forfeit (blank), and shall be committed to prison, there to remain by the space of three years in some House of Correction in the County where the said offence was committed, without bail or mainprise, and there to be kept to hard labour and receive correction as rogues and vagabonds ought to have by course of law, and during the said three years shall stand in the pillory at such times and in such places in the said county as the Court before whom such conviction was, shall for public example think fit to order; and for the second offence shall suffer death as a felon without benefit of clergy.¶]

* Alterations made by the Judges in the original draft.

† The Select Committee, in their first report to the House, proposed to leave out in this clause the words "wilfully and knowingly," to fill up the two blanks with "one hundred pounds," and to devote the penalty "to the use of the poor of the parish where such minor doth reside, to be applied as the other forfeitures are by this Act directed." (Com. Book, 2 Aug.) On report the House decided that the penalty should be 200l. (MS. Min. 6 Aug.) On recommitment the Committee left out the whole clause down to "in like manner," and substituted paper † (Annex a). (Com. Book, 10 Aug.)

‡ Added on recommitment. Com. Book, 10 Aug.

§ Here is marked for insertion Clause A (Annex b below).

|| The words "or in any marriage without a licence," had been here added by the Judges in the original draft, and then struck out.

¶ The Select Committee in their first report had proposed to omit in the first of the above two clauses enclosed in square brackets the words "wilfully and knowingly," to add a year's imprisonment to the penalty for the first offence, to fill both blanks with "one hundred pounds," and to devote the penalty "to the poor of the parish, to be applied as the other forfeitures are by this Act directed." In the second of these two clauses, they proposed to leave out "maliciously and wilfully" and to fill the blank with "one hundred pounds, to be recovered as aforesaid, and to

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Provided always that where the city of London or any other city or corporation have right to the guardianship or custody of any orphan, their consent in writing under their common seal to any marriage shall be sufficient within this law, according to the limitation of ages for minors before expressed.*

Provided also that no marriage shall be impeached by virtue of this Act where the parties shall [quietly] cohabit [during their lives or] until their respective full ages of [one] five and twenty years, if males, and [eighteen] one and twenty years, if females, without any actual separation or suit commenced in some of [his Majesty's] *their said. Majesties** ecclesiastical courts for declaring the nullity of such marriage during such their minority; *but that all such marriages shall be taken to be had with due consent, according to the rules and provisions of this Act.**

Provided also that where the father of any minor shall by his last will or any other writing, signed and attested as abovesaid, testify his approbation or consent to any marriage to be had by any of his children, and such marriage be accordingly had after his death, that such marriage shall be as valid as if he had been living and present and consenting thereunto.† [On 16 July, after the Bill "to relieve Christopher Monk from a clandestine marriage when he was under the age of 14 years" was read a first time, it was ordered that the Bill against Clandestine Marriages‡ be brought in to-morrow by the clerk. (MS. Min.). On 20th July the Judges were ordered to bring in a Bill for this purpose, and they corrected an earlier Draft, mainly to make it tally with the Bill of 1685, and brought it in this day, when it was read 1^a (L. J., XIV. 287, 296). The Bill was considered in Select Committee, and, on Report, re-committed. (Com. Book, July 29, 31, Aug. 1, 2, and 10, and MS. Min. 6 Aug.) Dropped in H. C. after a first Reading, C. J., X. 267. The corrections made by the Judges on the original Draft, and the amendments made by the Select Committee on commitment and re-commitment appear in the text above and the footnotes thereto. The Bill was revived on 23 Oct.]

- (a.) 10 August.—Amended Clause marked + viz., "That if any Chancellor, Commissary or Official, or their surrogates, or any other person having or pretending to have power to grant licences to marry, whether in places of ordinary jurisdiction, or in any exempt, peculiar, or privileged place, shall after the 23rd of October grant any license for the marrying of any person (not being in the estate of widowhood), whose parents or one of them are living, without the consent of such parents or parent personally present, or a certificate of [his or their] *such* consent, [under the hand and seal of such parents or parent attested by] *signed and sealed by such parents or parent in the presence of a Justice of the Peace of the county where such parents or parent shall then dwell, and attested by the said justice of the peace under his hand and seal and by the oaths of two credible witnesses who*

be applied to the uses aforesaid." (Com. Book, 2 Aug.). On Report, the House decided that the former clause should have one penalty instead of two, and that the latter clause should be worded by the Committee. (MS. Min., 6 Aug.). On recommitment both clauses were left out, as well as the closing words of the previous clause, and Clause A (Annex b.) was substituted by 4 votes to 2. (Com. Book, 10 Aug.)

* Alterations made by the Judges in the original draft.

† Here clauses O and Z are noted for insertion. See Annexes (c) and (d) below.

‡ Referring, no doubt, to the previous Bill of 1685, for which see Calendar, 11th Report, Appendix, Part II., No. 420.

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have heard the parents or parent declare their or his consent, and seen the said certificate sealed and subscribed by them or him, *and the said justice of the peace*, or shall grant any license for the marrying of any minor whose parents are dead, without full proof, upon the oath of two credible witnesses, that such minor is at least of the age of 18, if male, and 16, if female, and likewise without the consent of his or her guardian or guardians personally present, or a certificate of his or their consent, [attested] *signed and sealed by such guardians or guardian in the presence of a justice of the peace of the county where such guardians or guardian shall then dwell, and attested by the said justice of the peace under his hand and seal and by the oaths of two credible witnesses who have heard the guardians or guardian declare their consent, and seen him or them, and the said justice of the peace subscribe, and seal the said certificate, then every person aforesaid granting such license, shall forfeit 500*l.*, to be recovered and disposed of as the other forfeitures in this Act are directed.*" [Ordered to be substituted for part of the Bill this day on re-commitment. Com. Book.]

- (b.) 10 August.—Amended Clause marked A. viz., "And be it enacted by the authority aforesaid that [the minister] *any person* in Holy Orders or pretending to Holy Orders who shall marry or join in marriage such minor, [or be active and consenting to any matrimonial contract contrary to the true intent and meaning of this Act] *without such license as is directed by this Act or without the publication of the banns in manner as is by law appointed*, shall be and is hereby adjudged a felon, and shall suffer death as in case of felony without benefit of clergy; and that the father of such minor, and for want of such father, the mother, and if there be no father or mother, then the guardian not consenting to such marriage [or contract], and for want of such guardian, or in default of prosecution by such guardian or any other person aforesaid for the space of twelve months after such marriage, then the next of kin of such minor shall have an Appeal of felony against such [minister and ministers or pretended ministers] *person and persons in Holy Orders or pretending to Holy Orders*, and shall have the suit to pursue the same to have them convict of life, wherein the defendant shall not be received to wage battle, but the truth of the matter shall be tried by inquisition of the country, neither shall any pardon be pleaded in bar of such suit or in stay of judgment or execution of the same." [Ordered to be substituted for part of the Bill this day on re-commitment. Com. Book.]

- (c.) 2 August.—Amended clause marked O. viz., "And for the preventing of all other irregular and clandestine marriages for the future, Be it further enacted that if any parson, vicar, or curate of any parish church or chapel, or the minister of any exempt, peculiar, or privileged place, or any other person in Holy Orders, or pretending to be in Holy Orders, shall from and after the said 23rd of October officiate in the marriage of any persons without such publication of the banns as by law is required, or without license first had, and obtained from such person as hath authority to grant licenses for marrying in the place where the parties to be married, or one of them doth inhabit or reside, or shall officiate in such marriage at any other time, or in any other place than by law is appointed, then every person so officiating shall for the first offence be suspended ab

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officio et beneficio, and be committed to the common jayle, there to continue for three years without bail or mainprise, and for the second offence shall be deprived of all his ecclesiastical benefices and preferments, and be incapable of any such benefices or preferments for ever; and if he hath no such benefices or preferments, he shall be devested of his canonical habit and degraded from his ministry by the bishop of the diocese, and be committed to the House of Correction *for one year*, there to be kept to hard labour, and treated as rogues and vagabonds use to be [during life].” [Ordered this day to be added at the end of the Bill. Com. Book.]

(d.) 10 Aug. Clause marked Z., viz. “And be it further enacted by the authority aforesaid, that this Act shall be publicly read presently after Divine Service upon some Sunday before the said 23rd day of October in every Church and Chapel within the Kingdom of England and Dominion of Wales and town of Berwick-upon-Tweed.” [Ordered this day, on re-commitment, to be added at the end of the Bill. On 31 July the Committee had agreed to add such a Clause. Com. Book of dates.]

131. July 30. L. Morley’s Privilege (Hutchins). Information of Elizabeth Davis and Elizabeth Jennings. The former declares that on the 27th inst. Mr. Hutchins came to the house of John Jennings, and demanded 5s. 6d. for the trainbands, of his wife, who told him her husband was a Peer’s servant, and therefore, as she thought, not obliged to serve, and thereupon Hutchins spoke opprobriously of L. Morley, and said “He is some pitiful Scotch Lord and has nothing to do here.” *Endorsed* as read this day L. J., XIV. 300. MS. Min. of date.

Annexed :—

(a.) 2 August. Petition of Henry Hutchins, oilman. Begs pardon for his offence, and prays to be released. *Endorsed* as read this day. L. J., XIV. 302. MS. Min. of date.

132. July 31. L. Abergavenny’s Privilege (Bathurst).—Petition of Edward Bathurst, Esq., and Judith his wife, for leave to proceed on a decree and sequestration in the Court of Exchequer. L. J., XIV. 301. No entry in Priv. Book.

133. August 3. J. England.—Petition of the Constables of the Parish of St. Martins-in-the-Fields. Petitioners have been threatened by Mr. John England, Brewer, King Street, Westminster, in executing their Lordship’s warrant for stopping drays, carts, and carriages from 9 to 2 o’clock. *Signed* W^m Malyn, John Howell, Constable at the Charing Ward, William Lamborn, Constable at the Upper Ward in the Strand, Will. Norton, Thomas Baron, Edward Masters, James Sturton, John Clayton. L.J., XIV. 303. [Evidence was given this day at the bar. England was stated to have said that he was the King’s brewer, and cared not for their Lordship’s order. MS. Min. of date. The order referred to is that of 27 June. L.J., XIV. 257.]

Annexed :—

(a.) 5 August.—Petition of John England. As Petitioner’s drays were carrying drink upon the King’s account, and there were no coaches in the way, he thought good to pass half-way through King Street into Gardiner’s Lane, and so to be out of the way, but the constable refused him leave, and held up what he said was a warrant, but without showing it more plainly. Prays for his discharge. *Endorsed* as read and rejected this day. MS. Min. of date. No entry in L. J.

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(b.) 7 August.—Petition of same. Is sorry for his offence, and prays to be discharged. L. J., XIV. 305.

134. August 10.—Trade with France Act (1 W. & M. c. 34). Petition of the Free Vintners and other retailers of wine within the City of London and Liberties. The Commons have added a clause to the Bill for prohibiting French commodities, that no person from 10 Aug. 1689 to 10 Aug. 1690, shall sell French wines, or wines mixed with French wines, at a higher rate than 12*d.* the quart, and after 10 Aug. 1690, 6*d.* the quart, on pain of forfeiting 5*l.* for the first and 10*l.* for every later offence. This will ruin Petitioners, who have at least 30,000 tuns in stock (though less imported this year than in former years), two-thirds whereof was bought in above twelve months since, and for which a duty has been paid amounting to more than 400,000*l.*, which together with the prime costs, freight, and other duties, stands Petitioners in 12*d.* a quart, one with another, as they are ready to make out on oath. Should Petitioners be compelled to sell a moiety of their stock (which is as much as they can sell in a year) at cost price, without any consideration for leakage, cooorage, house-rent, etc., it will undo many of them, and to sell another moiety at 6*d.* the quart, when nearly 4*d.* has been paid to the King for his duty, will destroy the rest. Pray to be heard by Counsel at the Bar before the Bill passes. Signed Tho. Rawlinson, Tho. Kinsey, Rich. Kinsey, John Powell, Will. Symonds, Gilb. Bagnall, L. J., XIV. 308. [The Bill for prohibiting all trade and commerce with France was brought from the Commons on 9th and read 2*a* and committed this day. The motion to instruct the Select Committee to give the King a dispensing power was defeated by 37 votes (including 8 proxies) to 30 (including 9 proxies). Tellers, L. Cornwallis and L. Godolphin. (MS. Min., 10 Aug.). The Committee met on Aug. 12, 14, 15 and 16; V. Fauconberg in the Chair. On Aug. 12 they amended the Bill, as in the Act, as follows:—

§ i. Be it enacted that from and after the 24th day of [July] August,† 1689, none of the commodities of the growth . . . of France shall during or within the term of [seven] three‡ years

§ ii. (Line 11, Folio Ed. or public employment whatsoever, [* * * * *].)§ And if any of the commodities aforesaid shall be vended or remain in England . . . or Isle of Man [except prize goods as aforesaid],|| the same shall be seized.

§ iv. And forasmuch as the commodities . . . of the territories . . . of the French King prohibited by this Act are often sold by persons not being known Merchants, Vintners or Shopkeepers, Be it enacted that if any person, not being a *known Merchant, Vintner* or Shopkeeper, shall from and after the first day of [August] September,¶ 1689, sell The Committee then ordered the Merchants and Vintners petitioning (Annexes (a) to (e) below) to be heard at the next meeting. (Com. Book, 12 Aug.)—On 14 Aug. the Bill was further amended down to the end of § xiv. as follows:—

* The omissions are shown by square brackets, and the additions by italics.

† This amendment recurs consequentially in § i., l. 15 (Folio Ed.); § ii., ll. 13 and 14; § v., ll. 4 and 29; and § vi., l. 2.

‡ This amendment was carried by 10 votes to 8. (Com. Book, 12 Aug.) It recurs consequentially in § i., l. 16, § v., l. 5.

§ The portion here omitted is wanting, having been cut out of the Engrossment.

|| So also consequentially a few lines later.

¶ So also consequentially in § xiv., l. 1.

§ v. *ad fin.* . . . and suffer like imprisonment as aforesaid. [* *
* * * * *]

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§ viii. (Line 6, Folio Ed.) . . . to be paid unto them by the [person or persons so forfeiting (two lines are here illegible) of their Majesties' Customs for the time being, upon testimony or proof as to such forfeiture or condemnation and destruction of the goods as aforesaid] *owners and proprietors of the said goods so imported.*

§ xv. *ad fin.* . . . anything in this Act to the contrary notwithstanding. [And forasmuch as it is necessary for † * * * *
* * * anything in this Act to the contrary notwithstanding.]

After this the Merchants and Vintners were called in. *Sir Chas. Porter*, their Counsel, says the Vintners have never less wine by them than for two years' use. We pay 8*l.*, 10*l.*, 12*l.* a tun for freight, where we usually paid but 40*s.* There has been less wine imported this year than in former years. The law already is that we should sell out of these measures, and the law is strict in that case; and the law already is that the King's Great Officers set the prices of wines in November. *Mr. Ward* (for the Vintners) says all his clients have two years' stock upon their hands, and they cannot possibly spend it in less than two years. He speaks against the recovering the forfeiture before two Justices.—On the 15th, it is stated that the Merchants have several thousand tuns of wine in France that they cannot get home. There has been less wine imported this year than in any other year. *Mr. Ward* (for the Vintners) shows that this Act is so much stricter than the former for prohibiting the importation, that it is not possible to bring in any. We have more than two years' stock of wines upon our hands. *Sir Chas. Porter* (for the Merchants) says they have 6,000 or 7,000 tuns on their hands, and if the Vintners have not time to sell, we must have still half a year's provision of wines on our hands. *The Vintners*: Our wines stand us in above 12*d.* a quart, one with another. Our best wines at Bordeaux cost us 25*l.* insurance; 5*l.* freight [7*l.*]; customs, 15*l.*; in all 52*l.* We sell to the Vintners at 58*l.*, which stands the Vintners in 14*d.* a quart. Then, after substituting (September) for (August) in § xvi., the Committee decided, by 8 votes to 3, that 12*d.* should be the price for a quart of French wine for the whole time allowed by the Bill for the sale thereof.—On the 16th, *Counsel for the Canary Merchants*, desiring to be heard, are called in, as also *Counsel for the French Merchants and Vintners*, and are all heard to the price of wines. The Spanish merchant will not be able to sell any wine, if the French wine be sold so cheap. Then the question was put, whether the term for the selling wine at 12*d.* a quart should be eighteen months and no longer, which was resolved in the negative by 5 votes to 3, and it was agreed that two years should be the time. The Committee then amended the rest of the Bill as follows:—

§ xvi. Provided that no person shall set at or demand a greater price for any French wines, or wines so reputed, or other wines mixed with any French wines from and after the tenth day of [August] *September*

* The portion here cut out of the Engrossment, viz., from l. 10 to l. 30 of Skin 16, was omitted by 8 votes to 1. (Com. Book, 14 Aug.)

† Only the words at the beginning and end of this omitted clause, extending from Skin 21, l. 38, to Skin 23, l. 11, where § xvi. begins, are decipherable under the erasure; the remainder has been cut out of the Engrossment. The amendment was agreed to in the Commons by 59 to 56. C. J., X. 270.

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1689 to the tenth day of [August] *September* [1690] 1691,* than twelve pence by the quart, [and from and after the said tenth day of [August] *September* 1690 the sum of sixpence by the quart,]* and no more proportionably for a greater or less quantity, upon penalty of forfeiting for every quart for which a greater price than what is above mentioned is either demanded or taken, the sum of five pounds for the first offence to the Informer, and the sum of ten pounds for the second and every other offence to the Informer, to be [† levied or recovered, by distress or sale of the goods of the party so offending, by warrant under the hands and seals of two Justices of the Peace of the county or place where such offence shall be committed, before whom such proof shall be made upon the oaths of two or more credible witnesses, which the said Justices are hereby empowered to administer. Nevertheless, it shall be lawful for any person or persons that shall then be him or themselves aggrieved, to appeal from the judgment of such Justices to the next Quarter Sessions of the same county, who are hereby directed finally to determine the cause; and if upon such appeal, the Justices at such Quarter Sessions shall find the Appellant guilty, then they shall award him or them to pay double the value of such forfeitures, to be levied and recovered as aforesaid,] *recovered by action of debt, bill, plaint or information, in any of their Majesties' Courts of Record, where no protection or wager of law shall be allowed, or any more than one imparlance.*

§ xvii. And it is hereby further enacted that from and after the tenth day of [August] *September*, 1689, no Vintner or retailer of wines whatsoever shall sell or utter any wines by retail, other than by and in measures made of pewter and sealed according to the Statute, under the pain and penalty of five pounds for every such offence to the Informer, to be levied and recovered [by distress and sale of his goods, (*illegible*) appeal to the next Quarter Sessions as in the last foregoing Clause] *in any of such Courts and in such manner as aforesaid.*

Finally, a Proviso, offered by Sir — Firebrace, was read and ordered to be reported specially.‡ (Com: Book of dates.) The Amendments, excepting the two noted in § xvi., were agreed to on report (L. J., XIV. 316), and subsequently by the Commons (C. J., X. 270); and the Bill, as amended, received the Royal Assent on 20 Aug. (L. J., XIV. 318.)]

Annexed :—

- (a.) 10 August. Order referring preceding Petition to the Committee on the Bill. L. J., XIV. 308. *In extenso.*
- (b.) 10 August. Petition of several Merchants of the City of London, trading in wine. Petitioners have for a long time traded in wines from France, and in Nov. Dec. and Jan. last brought up wines at Bordeaux and elsewhere, on ready money payment, for the London markets, and have imported them at greater

* These two amendments were disagreed to on Report, when the Petitions of the French Merchants, &c. were read and, after debate, the Question was put, Whether to agree with the Committee in bringing the price of wine in the second year from 6d. to 12d.? Resolved in the negative. Contents 27, including 9 Proxies; Not-Contents 30, including 6 Proxies. Tellers, E. Macclesfield and E. Nottingham. (MS. Min. L. J., XIV. 316.)

† The portion here omitted is decipherable under the erasure. The amendment, as stated in C. J., X. 270, is merely a reference to the part of the Engrossment (Skin 23, l. 30, to Skin 24, l. 12), where the erasure occurs.

‡ This is evidently the Proviso A, concerning the sale of sophisticated wines, which is given in C. J., X. 270, and which is annexed as a separate Schedule to the Engrossment, forming § xviii. of the Act.

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charge than usual, owing to the then likelihood of a sudden outbreak of war with France. They have sold great part of these wines to the Vintners on credit, so that if the latter be restrained from selling them at a reasonable advantage, the loss will fall on Petitioners. The times fixed by the Bill are not sufficient for selling the wines and the rates are below what the Vintners have to pay Petitioners. Pray to be heard on their case. *Signed* Hen. Norton, Jo. Lambert, Henry Mansfield, Sam. Shephard, Abraham Beake, Tho. Dade, Tho. Bird, Tre. Gronen, Chas. Gregory, Elias Du Puy. L. J., XIV. 308.

(c.) 10 August. Order referring preceding Petition to the Committee on the Bill. L. J., XIV. 308. *In extenso*.

(d.) 10 August. Petition of several Canary and other Spanish Merchants, trading in wines, in behalf of themselves and others. The clause in the Bill will much injure Petitioners, who have sold to the Vintners and other retailers large quantities of Spanish wines on credit, the same Vintners having great stores of French wines on their hands which cost them more than the price they are allowed to sell at the first year, and above as much again as they can sell for afterwards. Hence most of the Vintners will be reduced to poverty and the trade will be discouraged, which will injure Petitioners. Pray that their case may be considered. *Signed* Sam. Schoonhoven, Simon Francia, John Blake, John Crosse, Rich. Holder, Chas. Hinde, Charles Price, Dan. Germaine. L. J., XIV. 308.

(e.) 10 August. Order referring preceding Petition to the Committee on the Bill. L. J., XIV. 308. *In extenso*.

(f.) 19 August. Petition of the Canary and other Spanish Merchants trading in wines. The Clause limiting the price of French wines will ruin the Vintners, and thus injure Petitioners, who have sold them large quantities of Spanish wines on credit. It will also prejudice the sale of such wines, while adding nothing to the prohibiting of French wines. Pray to be heard at the Bar. *Signed* Simon Francia, Fran. Francia, Edward Klanett, John Crosse, Edward Newte. *Endorsed* as read this day. MS. Min. of date. No entry in L. J.

(g.) 19 August. Petition of several Merchants, whose names are subscribed, on behalf of themselves and others. Petitioners endeavoured to satisfy the Committee that the wine imported could not be afforded for 12d. a quart, and that the wines imported this year, and now on their hands, cost more than formerly, owing to the excessive charges for freight and insurance. Pray to be heard, and their witnesses examined at the Bar. *Signed* Sam. Shephard, Tho. Bird, P. P. Reneu, Tho. Dade, Abraham Beake. *Endorsed* as read this day. MS. Min. of date. No entry in L. J.

(h.) 19 August. Petition of the Company of Vintners and other retailers of wine in and about London. To same effect as preceding. *Signed* Tho. Rawlinson, Anthony Gregory, Edward Cooke, Gilb. Bagnall, John Towers. *Endorsed* as read this day. MS. Min. of date. No entry in L. J.

135. August 10. *Coke v. Cobb*.—Petition and Appeal of Edward Coke, Esq., an Infant, by the Lady Anne Coke, his mother and guardian. Sir William Cobb and others brought a Bill in Chancery against Petitioner and William Guavas for 7,000*l.* legacies appointed by the will of John Coke, Esq. to be paid by Guavas and Capt. Coke, since deceased, the Executors of the will, out of the profits of lands,

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worth nearly 2,000*l.* per annum, which were leased by John Coke in trust for that and other purposes. These legacies were long since raised and received by Guavas and his co-trustee, who were above 12 years in possession of the lands; but Guavas not acknowledging the whole raised, the Lord Chancellor Jeffreys, on the first hearing of the cause, referred it to a Master to take an account. The Master having reported, Petitioner took exception to nearly 15,000*l.* omitted to be charged on Guavas, and if those exceptions had been allowed, as they ought to have been, there would have appeared in Guavas' hands enough to have paid the legacies, and Guavas ought to have been decreed to pay the same and the lands discharged. But the Lords Commissioners of the Great Seal, on a rehearing of the cause on 3 July last, without hearing the exceptions, decreed that the legatees should have immediate possession of the lands and hold them till their legacies were paid. The lands are thus doubly charged with the same legacies. The trustees, who have already raised them out of the lands, ought to be decreed to pay them. The decree takes no notice of what the trustees have raised, and makes no allowance for the sum of 500*l.*, a part of the legacies, which was paid by Petitioner's father in his lifetime. Appeals against this decree and prays that Sir William Cobb and the other complainants and also William Guavas may be ordered to answer. *Signed* Anna Coke. No signatures of Counsel. *Endorsed*: "Read 10 August 1689; read again 23 Oct. 1689." L. J. XIV. 308, 323. [The Appeal was heard on 27 Nov. *Serjeant Hutchins* (for Appellant), opens the case as to the settlement in tail male and remainder to Robert Coke. Mr. J. Coke makes a lease to Capt. Coke and Mr. Guavas upon trust for payment of his debts, legacies and funeral charges. It continued thus for twelve years. Robert Coke married and had issue the Appellant, who is tenant-in-tail to this estate charged with the debts. Counsel ordered to withdraw. House moved to keep to the order of but two Counsel, and not to entangle the cause with other proceedings. House moved to go on the business of E. Lincoln. Then, after concluding this and other business, Counsel were called in again in the cause. *Sir Charles Porter* (for Respondents and Legatees), speaks to the particulars and who was entitled to the estate. 500*l.* was paid by Robert Coke. The Appellant avoids the agreement. *Sir William Whitelocke* (for the Legatees): The debts are justly due to the legatees. In 1671 there was a deed of trust, wherein he declared the trustees shall and will pay and discharge all the debts of John Coke, &c., and such legacies as he shall by his last will bequeath. And then he makes his will: "I will and devise to all my sister's children 1,000*l.* apiece in full for all things." There is a decree in the Exchequer for it. Holkham is particularly to pay these legacies. *Sir William Williams* (for Respondent Guavas): Says he does not see that Mr. Guavas is concerned. *Mr. Finch* (for Appellant): As to the deed of trust, it never was in the pleading. That they are legatees, we agree. The decree is not right; the Bill was brought against Coke and Guavas too. The Court ought to have directed an account of what Guavas had received. The question is whether, when a trustee has received enough, the land is discharged. A person gives legacies and land to pay it, and the land has once borne it, but then it ought not to be encumbered. The trustee, after the time has elapsed, shall never enter. *Sir W. Whitelocke* and *Sir T. Trevor* also speak for Guavas. Counsel reply on both sides. Report to be made to-morrow.—On 28 Nov. the Speaker reported the Cause, and, after debate, *L. C. Baron [Athyns]* is heard as to whether, if the decree be reversed, the legatees will not be in a worse condition than before, and, if the decree be affirmed, that the heir may not have his remedy against Guavas. Another Question: To

know whether, in case the decree be set aside, the Chancery will ever let them in again, though they have the right? *L. C. Baron* heard to it: They may let them in again, I do not doubt it. An order made in *E. Macclesfield's* case [read]. Exceptions having been offered to this account, and not admitted by the Court of Chancery, therefore do order a rehearing of this Cause. Order drawn and read. Question, Whether this order shall stand? Previous Question put and resolved in the affirmative. Then main question put and resolved in the affirmative. (MS. Min. L. J., XIV. 355.)—On 18 Dec. the judgment was amended on motion, by consent of both sides. (L. J., XIV. 375.)*]

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Annexed:—

(a.) 8 Oct. 1689.—Answer of William Guavas, Esq., surviving Executor and Trustee of John Coke late of Holkham, Esq., deceased. The late John Coke having in November 1665 settled an estate of about 7,000*l.* per annum from his own sisters in tail male, under which Appellant claims, reserved power thereby to grant leases on the manor of Holkham, and some other manors and lands in Norfolk and Suffolk, being part thereof, of about 1,200*l.* per annum for 500 years. In pursuance thereof, on 23 July 1671 he leased the same to Capt. Coke and Respondent in trust to pay his debts, funeral expenses and such legacies as he left by his will, and four years after such payment in trust to attend the inheritance. He left by will 1,000*l.* a year among his sister's seven children, to be paid out of the profits of Holkham, and several legacies to his servants and others, and gave all his goods and chattels to his sister Elizabeth Cobb and the said Capt. Coke, his first cousin, and to Respondent, whom he made his executors to their own disposition. Capt. Coke and Respondent, after paying off the debts and legacies as they received assets, agreed in 1671 with Mrs. Cobb for her interest in the executorship for 1,200*l.*, which they secured her with interest by bond, and have since paid her in part of principal and interest about 1,459*l.* Appellant's father in 1676 made an agreement in writing with Capt. Coke and Respondent for their interest in the trust estate and in the executorship, whereby he was to pay 3,600*l.* to Capt. Coke, 3,500*l.* to Respondent, and the said 1,200*l.* and interest to Mrs. Cobb; but, although he received above 2,843*l.* out of the personal and trust estate, he paid out only 500*l.* to the Respondent John Castle in part of his legacy. The Respondents, the legatees, having brought their Bill in Chancery in 1684 for an account and for payment of their legacies, Respondent set forth the deed of trust and insisted that he ought not to account for the personal estate, the same having been given to him and his co-executors by the Testator. The cause being heard in April 1686, the Lord Chancellor Jeffreys decreed an account before Sir Robert Legard of how much had been raised out of the leased and also of the personal estate by Capt. Coke and Respondent. The Master reported in April 1688, charging Respondent with what Capt. Coke and Appellant's father as well as with what Respondent received, though Respondent has disbursed 1,355*l.* 15*s.* more than was

* The MS. Min. of 29 Nov. have the following entry, not given in L. J.:—"Upon reading the Order made yesterday the House ordered the words (*de novo*) to be left out, and the word (final), and to add at the end (according to equity and justice)."

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received out of the personal and trust estate. Appellant and Respondent excepted to this Report, but in regard the cause had not been heard on the principal point at issue, vizt., whether the personal estate be or be not given by the Testator to his executors, or whether Respondent ought to account for the same, Respondent petitioned for and obtained a hearing on the whole merits, and on 3 July last the Court, without determining that point, decreed the profits of Holkham towards satisfaction of the legacies of 7,000*l*. Appellant's mother, by an order obtained by surprise in the Exchequer, has received the profits of the trust estate since Michaelmas 1683 and also the benefit of a sequestration on a decree obtained by Respondent against Andrew Fountain, Esq. in the Exchequer for above 12,000*l*., and will pay neither debts nor legacies. Respondent is thus harassed with twelve expensive suits on account of his trust and executorship, and has been forced to mortgage his paternal estate, and has been fined and imprisoned and made to pay above 3,000*l*., while Appellant's agents or relations receive the profits of an estate limited by Act for payment of the debts of Appellant's father. Prays that the Appeal, which is vexatious, may be dismissed with costs. *Endorsed* as brought in this day.

(b.) 6 Nov. 1689. Answer of Sir William Cobb, Knight and others, Legatees of John Coke, late of Holkham, in the County of Norfolk, deceased. Respondents are the heirs general of the late John Coke's estate, but were disinherited by his settlements, and the estate is come to the Appellant, there being only a small provision of 7,000*l*. left for Respondents by John Coke's will in 1671. Respondents have ever since 1678 been prosecuting Guavas and his co-executors for payment of their legacies. The Court of Chancery justly decreed possession to Respondents till those legacies were satisfied, whereof the 500*l*. paid to John Castle was not disputed to be a payment on account of the whole sum of 7,000*l*. due. Pray that the Appeal may be dismissed. *Endorsed* as brought in this day.

136. August 12. Wool Act (1 W. & M. c. 32).—Petition of the Governor, Assistants and Fellowship of Merchant Adventurers of England and of the Governor, Assistants, and Fellowship of Merchants of Eastland. Petitioners understand that in the Bill for preventing the exportation of wool, a clause has been added by the Commons giving liberty to all persons to export any home made woollen manufacture, on paying the usual customs. This clause will much affect the trade of the Kingdom, and in particular the establishments of the incorporated Companies of Merchants, some of which have been erected nearly 400 years ago, and all of them were expressly saved by the Statute of 21 Jac. I. Pray to be heard before the Bill passes. *Signed* William Cranmer, Deputy Governor of the Fellowship of Merchant Adventurers of England, Nathan Tench, Governor of the Fellowship of Merchants of Eastland, Benj. Ayloffe, Deputy. Read and referred to the Select Committee this day, L. J., XIV. 309. [The Bill was brought from the Commons on 10 Aug., L. J., XIV. 307. On the 13th, in Select Committee, the above Petition and that of Lady Portland (annex a) were read, and Counsel for and against the Bill were called in. *Sir Chas. Porter* (for the Merchant Adventurers) says the Act in general is a good Act; but the clause relating to the woollen manufacture will hinder the consumption of wool. This clause was added partly upon a surprise. It is but 13*l*. 6*s*. 8*d*. that is expected of any man to come

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into this Company. We are a more beneficial Company than the Turkey Company, which is provided for. We hope we have done nothing to forfeit the privilege we have long enjoyed. *Sir Barth. Shower* (for Petitioners): There will not be more cloth exported if this clause be left out. We send more than the country needs to supply them with. They make as good as we, but cannot sell so cheap. Every man in this Society trades upon a particular stock, sells as cheap as he will, as dear as he can. The Hamburg Company constantly employs English shipping. Interlopers employ foreign bottoms. This clause will carry the trade of this nation into the hands of strangers. *Mr. Ward* (for the Bill): This general freedom for all persons to export will greatly advantage the kingdom. *Mr. Skinner* (for the Bill): The Act of Navigation takes care that the cloth shall not be sent in foreign bottoms. *For the Company*: The taxes the Company impose upon their members are not $\frac{1}{16}$ part of the duty the interloper must pay, our privileges and immunities are such. *E contra*, the very men of Hamborough come to Amsterdam to buy the very English goods that they might have of the Company at Hamburg. The Company trades for at least 200,000*l.* per annum. They withdraw. After debate, the E. Rochester, who was in the chair, not thinking it proper to put the question whether the last clause save one in the Bill should stand, before the former part of the Bill was considered, nor to put any question at all, the House being sitting, and the Committee having been once or twice sent for by the House, left the chair; whereupon the D. Bolton, at the desire of the Committee, took the chair, and put the following question: Whether the clause beginning Sk. 8. l. 1, giving liberty to any person to export the woollen manufacture, shall stand in the Bill? Contents 8, Not Contents, None. Resolved in the Affirmative. (Com. Book, 13 Aug.)—The Bill was reported without amendment by D. Bolton on 15th Aug. (MS. Min. No entry in L. J.), on which day the Order for the Hamburg Company to be heard at the Bar was made after Debate (*ib.*).—On 16 Aug. *Sir Charles Porter*, for the Russia Company (see Annex c), said, If that Bill be admitted, it will be the ruin of their trade. They have enjoyed their trade several years. We have the sole trade. We hope we may be excepted. *Counsel for Eastland Trade*: All foreigners have leave to trade. The provisions of hemp and flax will be in foreigners' hands. Every man in England may come in for 40*s.* *Mr. Serjeant Thompson* admits that provision may be made for the Russia Company. *Sir Chas. Porter* for Hamburg Company: The merchants of Hamburg buy their cloth at Amsterdam. If so, my clients will give up their Charter. He speaks as to the Oath of the Company. This Company has continued near 300 years. *Sir Barthol. Shower* for the Company: This Company has been standing 400 years. Every member of this Company trades upon a several stock. *Mr. Serjeant Thompson*, for the Merchants that desire a free trade, and are not of that Company: In 9 Edw. III. 1, it is enacted that all persons may buy and sell cloths. Recites several statutes that their charter is against. They never durst try their Patent in Westminster Hall. *Mr. Ward*, for the Bill: The kingdom labours under the want of an exportation of woollen manufacture. In former times, people could not fetch out their commodities but at odds. Now the wisdom of Parliament has provided (*sic*). They withdraw. A Petition of the Royal African Company of England read. The African Company to be excepted in the Act. Then the L. Privy Seal reported, and, after debate, ordered that the Eastland, African and Russia Companies shall be excepted. Then the question was put, Whether to agree to the clause as it came from the House of Commons? Resolved in the affirmative. Contents 40, including 11

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Proxies; Not-Contents 28, including 9 Proxies. Tellers, E. Derby and E. Sussex. (MS. Min. 16 Aug.)]

Annexed:—

- (a.) 12 August. Petition of Frances, Countess Dowager of Portland. Petitioner has a license, by Letters Patent granted by Queen Elizabeth and renewed by Charles II., to ship in any port in England all manner of unwrought woollen cloths, etc., above the value of 4*l.*, cloths made in Suffolk and Kent only excepted. Fears that a clause in the Bill may affect her Patent and make it of little or no advantage. This Patent being but a small support to her low and necessitous condition, and in no way prejudicial to the Clothiers' trade, her profits arising chiefly from the Hamburgh Company, Petitioner prays to be protected in the Bill, if necessary, by a proviso. *Signed* Portland. [Read and referred to the Select Committee this day. L. J., XIV. 309.]
- (b.) 15 August. Petition of the inhabitants of the Island of Guernsey. The Act 12 Car. II. c. 32, gives liberty to carry from Southampton to the Channel Islands certain quantities of wool, being what were then conceived to be fit proportions for carrying on the stocking manufacture of those islands, which is their sole trade. Since that time, Guernsey has increased in population above a third part, and the quantity then fixed, viz., 1,000 tods, has fallen so short for the trade, that they are forced to buy wool from France, which wool Petitioners firmly believe was of English growth there combed, and from thence thither conveyed. This source of supply being cut off, Petitioners pray that a clause may be added to the Bill to increase the number of tods to be sent over to the said islands, but on the same penalties as before, or any other further penalties not to export any of the said wool from the said Islands. *Signed* Eleazar le Marchant, E. Roland. [Read this day, and a Proviso to that purpose being offered, was read and added to the Bill. L. J., XIV. 313.]
- (c.) 15 August.—Petition of the Governor, Treasurer, and Fellowship of Merchants for discovery of New Trades, commonly called the Russia Company. The clause, added to the Bill in the House of Commons shortly before its passing, which allows any persons, foreigners as well as natives, to export English woollen manufactures, will concern the whole trade of the kingdom, and infringe the privileges of Petitioners, who have the sole trade to Russia and other places, granted to them by the statute of 8 Elizabeth. Pray to be heard on the clause, before the Bill passes. *Signed* Sam. Meverell, Treasurer of the said Fellowship. L. J., XIV. 312. [Counsel heard at Bar on 16 Aug., and Company excepted. MS. Min.]
- (d.) 16 August.—Petition of the Royal African Company of England. Petitioners have by Letters Patent the sole trade to Guinea, which cannot be otherwise supported than by a joint stock, and under the protection of forts and garrisons, and by ships of war. Pray to be heard against the clause allowing the exportation of woollen manufactures to all parts. *Signed*, Henry Tuke, Gabriel Roberts. L. J., XIV. 313.

137. August 12. Fees to Officers of House.—Petition of Sir Thomas Duppa, Black Rod, and other officers belonging to the House of Peers, praying that the fees of entrance and proxies, belonging to the officers

of the House, be duly paid. Signed only by Black Rod. L.J., XIV. 309, almost *verbatim*.

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138. August 13.—Oates' (Reversal of Sentence) Bill.—Message from the Commons for a Conference on the Bill, L. J., 310. *In extenso*. [The Bill was brought from the Commons on 6 July. On 9 July, the motion to go into C.W.H. was carried by 28 Contents, 7 proxies, to 24 Not-Contents, 4 proxies, E. Clare and E. Ailesbury, Tellers. In C.W.H., V. Newport in the chair, the Bill was read through. Title and Preamble read and agreed. The 2nd paragraph read and agreed. The 3rd paragraph read. After debate about separating the judgment from the Verdict, *Question* proposed, Whether these words shall stand in this paragraph ("the said verdicts brought in against the said Titus Oates were corrupt and")? *Question*, Whether the House shall be moved that the House may be put into a Committee tomorrow to go on with this debate? *Question* put, Whether this question shall be now put? Resolved in the negative. Then this question was put, Whether these words shall stand in this paragraph ("the said verdicts," &c. *ut supra*)? Resolved in the negative. Then the words ("against the said Titus Oates were") were agreed to be put in the paragraph, l. 29. The enacting clause read. L. 34, leave out ("said verdicts be held null and void, and that the"). L. 37, leave out ("verdicts and"). House resumed. L. V. Newport reported the Bill with the amendments, which were twice read by the Clerk. The first Clause agreed to with the Committee. The Amendment in the enacting part [read]. *Eyre, J.*, heard as to Whether, if the judgments be reversed, Titus Oates stands *rectus in Curia*? He says: The Judgment being reversed, all is set aside. After debate, the motion to adjourn the debate till the next morning was carried by 29 Votes to 19, E. Northampton and L. Lovelace, Tellers. (MS. Min., 9 July.)—On 10 July, the House entered into debate upon the Bill. The debate was upon the preamble to the enacting clause, "and the said judgments given by the Court of King's Bench erroneous, cruel and illegal, and are of evil example to future ages"; and whether this paragraph was passed, so that the House be not at liberty to debate that clause. After debate, *Question*, Whether the House be now at liberty to proceed in the debate of the Enacting Clause of the Bill? Resolved in the negative. Contents 35, including 6 proxies, Not-Contents 41, including 9 proxies. Tellers, E. Bath and E. Berkeley. Then the preceding paragraph read as amended by the Committee. After debate whether to postpone, *Question* proposed, Whether to agree with the Committee in this part of the Preamble? *Question* put, Whether this question shall be now put? Resolved in the negative. Contents 37, including 6 proxies; Not-Contents 38, including 9 proxies. Tellers, E. Bridgewater and E. Ailesbury. Leave given for protesting. *Question* put, Whether this part of the Preamble shall be postponed? Resolved in the affirmative. Contents 39, including 9 Proxies; Not-Contents 36, including 6 Proxies. The paragraph postponed. Debate adjourned till to-morrow.—On 11 July debate resumed. The Enacting Clause read, as amended by the Committee, and, on question, postponed. *Moved*. That the Bill be recommitted to be made suitable to the opinion of the major part of the House. *Ordered* to be recommitted to the Committee of the Whole House presently. House adjourned during pleasure. E. Bridgewater in the Chair. The first postponed clause read as it was amended by the Committee. A Proviso offered to be added to the Bill, and read twice. Sub-Committee appointed, viz:—

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L. Steward,
L. Privy Seal,
D. Beaufort,
L. Bp. Sarum,
J. Montagu,E. Rochester,
L. President,
V. Weymouth,
and
Bp. London,

to withdraw presently to alter the clauses pursuant to the Debate; to amend or draw somewhat instead of what is in the Bill, pursuant to the majority of the House (MS. Min. of dates).—At this Sub-Committee, L. President [Danby] in the chair, the last two clauses in the Bill were read. After debate, *Question*, Whether the word (erroneous) shall stand in the Clause? No vote was taken, but the Sub-Committee ordered to report that there being a material difficulty arisen, wherein the opinion of the Judges is requisite to be known, and none of them now attending, they desire the attendance of some of the Judges. (Com. Book 11 July.) The L. President made this Report to C. W. H. The Judges were sent for in, and they being gone, the Sub-Committee desire time to have their assistance. After debate concerning the Judges, L. President acquainted [the Committee] it was the word “erroneous.” Would [it] not destroy a Proviso that seemed to be agreed to? After debate, *Question* proposed, Whether to agree with the Sub-Committee? *Ordered* to report that the Sub-Committee desires time till to-morrow. After debate, House resumed. E. Bridgewater reported as in L. J., XIV. 274. *Ordered*, That the Sub-Committee meet to-morrow and report, and the Judges to attend them. (MS. Min. 11 July).—On 12 July, at the Sub-Committee, L. President in the chair, the Judges are asked whether, if the word “erroneous” stand in the Bill, the Proviso to be added at the end of the Bill, will incapacitate Oates as to giving evidence &c.? The Proviso, a little altered, will answer Your Lordship’s ends. The Judges withdraw to prepare a Proviso; which having done, the Proviso is read. They withdraw. Several amendments are made and ordered to be reported with the Proviso drawn by the Judges. (Com. Book.) *Eod. die*. The L. President [Danby] reported from the Sub-Committee the Amendments and Proviso, which are read, viz:—

(1.) Line 27.* Leave out (the said Verdicts [brought in against the said Titus Oates were corrupt and] L. J., XIV. 288].

(2.) Line 29. After (King’s Bench) insert [(against the said Titus Oates were) L. J., XIV. 288].

(3.) Press 3, Line 29. After (erroneous) read (unprecedented and so), and after (illegal and are of ill example for future ages) read (that the practice thereof ought to be prevented for the time to come).—*Question* put, Whether to agree to this amendment? Resolved in the affirmative. Contents 40, including 9 Proxies; Not-Contents 32, including 5 Proxies. Tellers, E. Feversham and L. Cornwallis.†

(4.) Line 34. After (King’s Bench) leave out (and the Judgments given on the said Writs of Error).—*Question* put, Whether to agree to this Amendment? Resolved in the affirmative.

(5.) Line 37. After (Judgments) add (in the Court of King’s Bench).—*Question* put, Whether to agree to this Amendment? Resolved in the affirmative.

(6.) Line 37. After (defaced) leave out (anything to the contrary notwithstanding) and read (And it is hereby further enacted by the

* These two amendments are not given in L. J., XIV. 276.

† The numbers in this Division are given in Parl. Reg. (Lords’ Proceedings), vol. 25, p. 868.

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authority aforesaid, That it shall not be lawful, at any time hereafter, to inflict the like excessive punishments again on any person whatsoever).—*Question* put, Whether to agree to this Amendment? Resolved in the affirmative.

(7.) Proviso read, viz^t (Provided always and be it hereby Enacted and declared, That until the said matters for which the said Titus Oates was convicted, as aforesaid, for perjury, be heard and determined in Parliament, that the said Titus Oates shall not be received in any Court, matter or cause whatsoever, to be a witness or give any evidence, anything in this Act contained to the contrary notwithstanding).—*Question* put, Whether to agree to this Proviso? Resolved in the affirmative. Bill, as amended, ordered to be engrossed. . . . *Eod. die.* Bill read 3^a. *Question* put, Whether this Bill, with the Amendments and Proviso, shall pass? Resolved in the affirmative. Contents 33; Not-Contents 22. Tellers, F. Craven and V. Newport. (MS. Min. L. J., XIV. 276–8.)—On 22 July the MS. Min. give E. Bedford and E. Bridgewater as Reporters of the Conference, in addition to those given in L. J., XIV. 288. E. Stamford having reported from the Conference that the Commons disagreed to all the Lords' Amendments, *Question* put, Whether to proceed now in the consideration of this Report, &c. as in L. J., XIV. 289. Resolved in the negative. Contents 28, including 5 Proxies; Not-Contents 36, including 12 Proxies. Tellers, E. Northampton and E. Rivers. *Ordered* to be considered on the 24th (MS. Min.).—On 24 July the Lords insisted on their first amendment by 39 Contents, including 15 Proxies, against 38 Not-Contents, including 7 Proxies. Tellers, E. Manchester and E. Northampton. (MS. Min.).—On 27 July the question as to the Free Conference (L. J., XIV. 297) was negatived by 31 votes to 18, Tellers, E. Radnor and V. Lumley (MS. Min.).—On 30 July, E. Rochester reported the effect of the Free Conference, and that Mr. Somers opened the business, and they insisted on their own Bill against all the Lords' Amendments, and went through all. Next was Mr. Wildman, and spoke as to the bribery of the jury, but did not in particular show one corruption of the jury, but spoke to the corruption of the time, and that great sums of money were expended in his prosecution. The Lords' Managers mainly insisted upon the proving of money paid to the jury. L. Bp. London speaks to the Address to the King and Queen which the Commons insisted on. After debate, which was mostly upon the corruption of the jury and evidence, a message was brought from H.C. Then the House resumed the debate, and after debate, *Question* proposed, Whether to adhere to the amendments? Contents 48, including 14 Proxies; Not-Contents 38, including 6 Proxies. Tellers, L. Cornwallis and L. Jermyn (MS. Min.). The Bill remained with the Commons. See also C. J., X. 263–4.]

Annexed:—

(a.) 13 August.—Order appointing Committee to search for Precedents for granting of Conferences after adhering. It contains the names of D. Bolton and Bp. London, which do not appear in L. J., XIV. 310. [No record appears of any proceedings of this Committee.]

139. Aug. 13. Woollen Manufactures (Wearing) Bill.—Commons' Engrossment of an Act for the enjoining the wearing of the woollen manufactures of this kingdom at certain times of the year. For preventing the exportation of wool unwrought and encouraging the woollen manufacturers of this kingdom, Be it enacted by, &c., That from and after the first day of September which shall be in the year of

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Our Lord 1689, no person or persons whatsoever shall, between 15th day of October and the 15th day of April inclusive in any year, wear any cloak, coat, doublet, breeches, gown, manteau, upper petticoat or other upper garment or apparel but of cloth or stuff made of sheep's wool only, and manufactured either in England or Wales (except the frock, doublet, and breeches of poor men, made of leather, fustian, or coarse linen, and also except the linings of the several garments aforesaid or apparel) under the penalty of 40s., for every time that such person or persons shall be found or discovered wearing any such like garment, within the time aforesaid, of any other sort or made of any other material, to be levied by distress and sale of the goods and chattels of the party offending, rendering the overplus, reasonable charges being first deducted, the said forfeitures to be recovered by warrant under the hand and seal of any one Justice of the Peace, upon conviction by view of such Justice, or proof upon oath of one or more witnesses, or confession of the party before any Justice of the Peace or Mayor or other Chief Magistrate of any Corporation, so as Information be given within five days after the discovery of such offence before such Justice or Chief Magistrate, which they are hereby authorised and required to administer, one moiety of which penalty shall be to the Informer, and the other moiety thereof to the use of the poor of the parish wherein such offence shall be committed.

And be it further enacted, by the authority aforesaid, That from and after the said 15th day of October, all clergymen, professors, practicers and students of the laws, both civil and common law, and all Mayors, Aldermen, Bailiffs, Jurats and Common Council-men, and all other persons who by their order, degree or quality use to wear gowns, shall wear the same made of cloth or stuff made of wool manufactured within this kingdom, under the like penalties, to be recovered in the form aforesaid.

Provided, nevertheless, That it shall and may be lawful to and for all and every person and persons to wear any garment made of stuff or silk, or lined with stuff or silk, from the 15th day of April to the 15th day of October in every year, anything herein-before contained to the contrary hereof in any wise notwithstanding.

And be it further enacted, by the authority aforesaid, That from and after the said 15th day of October, unless for the use and service of the King and Queen's Majesties or the Ambassador of some foreign Prince or State, no person or persons shall line any coach, chariot or calesche with any other material than English cloth or stuff made of wool and manufactured in this kingdom, nor use any new coach made after the said time otherwise lined on pain of forfeiting by the maker 20*l.* and by the owner 50*l.*, to be recovered and levied in manner aforesaid, after conviction thereof, before any Justice of the Peace or Chief Magistrate in form aforesaid.

And be it further enacted, That if any person or persons shall presume to come into the King or Queen's presence or into the presence of Her Royal Highness at any time between the 15th day of October and the 15th day of April in any year during the continuance of this Act in any garment or apparel prohibited by this Act to be worn or within the verge of the Court, That the Lords Chamberlains and Vice-Chamberlains of the King and Queen's Household, and the Officers of the Board of the Green-cloth and every of them shall and are hereby authorised and required, upon conviction by their own view or confession of the party or credible proof upon oath by one or more witnesses (which oath they are hereby authorised and required to administer) forthwith to issue their warrant or warrants for the levying

the penalties appointed by this Act upon every such offender; And they are hereby further required to give order to all doorkeepers and such like officers under their command, to inform them of all such offenders within the verge of the Court.

Provided always, That it shall and may be lawful for men to wear cloaks or upper coats made of mohair yarn, so as the same be lined with English cloth or stuff made of sheep or lamb's wool and manufactured within this Kingdom.

And be it further enacted, by the authority aforesaid, for the further promoting of woollen manufacture, That the wives, widows and unmarried daughters of all day labourers, handicraftsmen, husbandmen, tradesmen and shopkeepers within this Kingdom of England, who are not charged or have not estates sufficient to be chargeable with the finding half a foot arms according to the qualifications of an Act of Parliament made in the 14th year of the reign of our late Sovereign Lord King Charles II., intituled An Act for the ordering of the Forces in the several Counties of this Kingdom, and all female servants (except one woman servant of a Baronet, Knight or Esquire, or so reputed by birth or office, and also except the waiting-women and chambermaids of persons of a higher degree) shall from and after the 15th day of October now next ensuing, wear on their heads hats made of wool and manufactured in this Kingdom at all times and in all places, except when they shall be about their domestic employments, within or about their fathers', masters' or mistresses' houses of abode, upon the pain to forfeit 5s. of lawful money of England for every such offence, to be recovered on such testimony to be made and taken before such Justice of the Peace as before in this Act is directed as to the wearing of woollen apparel, by such who shall sue for the same, one moiety of all which forfeitures shall be to the poor of the parish where such offence is or shall be committed, and the other moiety to him that shall sue for the same, wherein no essoign, wager of law or protection shall be allowed.

And be it further enacted, by the authority aforesaid, That from and after the first day of January which shall be in the year of Our Lord 1689, no person or persons shall or may import or bring into this Kingdom any silk wares or stuffs wrought or made in foreign parts, on pain of forfeiting the said silk wares, to be seized for their Majesties' use, in whose hands soever the same shall be found; And in case the same shall not be seized, That then any person may sue for and recover the value thereof in any of their Majesties' Courts of Record at Westminster, one moiety for their Majesties' use and the other moiety for such Informer. *Parchment Collection.* [Brought from the Commons this day (L. J., XIV. 310).—On 17 Aug. after a first reading, *Question*, Whether the Bill shall be rejected? *Previous Question*, Whether this Question shall be now put? Resolved in the negative. Contents 9; Not-Contents 15. Tellers not recorded. (MS. Min.)—On the 19th the Bill was rejected *Nem. Con.* (L. J., XIV. 316.). *See also next Paper.*]

140. Aug. 14. Woollen Manufactures (Wearing) Bill.—Petition of the Bailiffs, Wardens and Assistants, and of the Wardens and Assistants of the Companies of Weavers at London and Canterbury, praying to be heard against the Bill. *Signed* Henry Soames, Abraham Macare, John Drigue, Thomas Coles. Joshua Danbrine, Nahum Crosley, James Six, Phillip Manneke. L. J., XIV. 311. *In extenso.* [Read this day, and after debate about quelling the rabble and whether Petitioners should be called in, the L. Privy Seal, who sat Speaker, drew the Paper (*ib.* *In extenso*) reprimanding Petitioners for assembling a crowd,

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which was read by the Clerk and agreed to, and then read to Petitioners by the Speaker, and a copy was given to them. *Ordered* that directions be given to the officers of the Trained Bands to be in arms to keep the streets clear, and that the L. Mayor be sent to, to do the same, and be told that the Lords have an unusual concourse here to-day, and desire him to take care to prevent it; the Gentleman Usher to carry the message. An Address was also ordered to the King for the Guards to aid the Civil power. (MS. Min.)—On 15 Aug. *E. Oxford* acquainted the House from his Majesty that the King received the application very kindly, and thinks they have taken the right way by the Trained Bands, and if there is any occasion of Guards, he will send them. (MS. Min.)]

Annexed :—

- (a.) 17 August.—Petition of the Bailiffs, Master, and Wardens of the Companies of Weavers at London and Canterbury. The Bill enjoins the wearing of woollen manufactures six months in the year, which will be the ruin of many manufacturers of silk and hair. Pray to be heard before the Bill passes. *Signed* Henry Soames, Abraham Macare, Richard Awberey, Sam. Saunders, John Drigue, Wm. James. L. J., XIV. 315.
- (b.) 17 August. Petition of the Mercers of London.—The clause enjoining the wearing of woollen manufactures six months in the year will ruin Petitioners and thousands of families depending on them, and destroy the Bill itself, the design of which is the sale of English wool. Pray to be heard at the Bar against the body of the Bill. *Signed* by Peter Pickering and 85 other persons. L. J., XIV. 315.
- (c.) 17 August. Petition of divers of the inhabitants of the Counties of Bedford, Bucks, and Hertford, as well on behalf of themselves as of divers families inhabiting in the said counties, and in the towns, parishes, and places hereafter mentioned, who get their livings by making straw hats. The Bill contains a clause to enjoin the wearing of woollen hats, by persons therein mentioned. This will injure, if not ruin, nearly a thousand families in the towns of Luton, Dunstable, Studham, Whipsnade, Caddington, Kensworth, Edlesborough, Great Gaddesden, Eaton, Bray, Wingfield, Redborne, Flamstead, Sunden, Tottrenhoe, and Houghton Regis, and divers other towns and places adjacent. In these families are over 14,000 persons who live solely by making straw hats. The straw sold for that purpose is of great advantage to the farmers, it being sold at a dear rate. Little English wool will be used for making woollen hats, for it will not serve for that purpose. Pray that the Clause may be omitted or altered. *Signed* John Freeman, John Robins, John Tomkins, Thomas Sibley. *Endorsed*: Straw-hat Makers' Petition. L. J., XIV. 315.

141. August 14. *Mercer v. Mercers*.—Petition of Robert Mercer, Merchant. Petitioner in 1670 and again in 1672 brought his Appeal from the Exchequer, but the hearing was prevented by more important affairs and the differences then between the two houses in Sherley and Fagg's case. Petitioner in 1676 removed to Ireland, and came over in 1685 to prosecute the Appeal, but without success, the session being too short. Respondent Ellen Mercer is dead, and Alice married to John Wright. Prays that Wright may be made a party and a day appointed for hearing, and that the Respondents, who live in Lancashire, may be allowed a convenient time, so that they may not complain of having been surprised. *Endorsed*: Nothing ordered on it. MS. Min. of date. No entry in L. J. See also Calendar, Ninth Report, No. 23.

Annexed:—

(a.) 23 Oct. 1689. Petition of same, identical with preceding,
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142. Aug. 17. Papists, etc. (Security of Government) Bill.—Commons' Amended* engrossment of an Act for the better securing of the Government against Papists and other disaffected persons. Whereas by an Act made this Session of Parliament, intituled An Act for the Abrogating the Oaths of Supremacy and Allegiance and appointing other Oaths, two Oaths in the said Act specified, were appointed to be taken, and a declaration mentioned in the Statute made in the 30th year of the reign of King Charles II., intituled An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament, was directed to be subscribed by their Majesties' subjects, which Oaths and Declaration several Papists and other persons disaffected to the Government have refused or neglected to take, repeat, and subscribe, taking advantage of the length of time allowed by the said Act between such their refusal or neglect, before they should incur the penalties of the said Act, which by experience is found to be inconsistent with the safety of the Government in this present juncture of affairs; for remedy whereof, Be it enacted by, &c., That it shall and may be lawful to and for any two or more Justices of the Peace for the County, Riding, Division, City or Borough within the Kingdom of England, Dominion of Wales or Town of Berwick-upon-Tweed, where any Papist or suspected Papist, person disaffected or suspected to be disaffected to the Government, shall sojourn or reside [other than Peers of this realm, as Members of either House of Parliament], to summon before them by warrant under their hands and seals, at a place and time in the said warrant to be expressed and to be directed to the Constable, Headborough, Tythingman or other Officer of the parish or place where such Papist or suspected Papists, person disaffected or suspected to be disaffected to the Government, shall sojourn or reside, such Papists or suspected Papists, persons disaffected or suspected to be disaffected to the Government, to appear before them and take the Oaths expressed in the said first mentioned Act, and subscribe the Declaration expressed in the said last mentioned Act; which Oaths and Declaration the said Justices are hereby required and empowered to administer and tender to such Papists or suspected Papists, persons disaffected or suspected to be disaffected to the Government: And in case such Papists or suspected Papists, persons disaffected or suspected to be disaffected to the Government shall not appear at the time and place expressed in the said Warrant (Oath being made by some credible person before the said Justices of the Peace of the service thereof by giving a true copy of the said Warrant, subscribed by the person who served the same, to the person summoned, or leaving such copy of the same with some person residing or being at the place of habitation of the person summoned, and in case no person be there, or such as are there shall refuse to receive the same, then by fixing the same at the door of the said habitation, unless good cause be shown unto such Justices of the Peace for the not appearing of such person summoned, to be allowed by such Justices of the Peace, or if such person summoned shall appear before such Justices of the Peace and

* The Amendments are those made by the Commons, on third reading, on 16 August. Their additions, marked here by italics, are interlined on the Engrossment, their omissions, represented on the Engrossment by erasures, are supplied by the list of Amendments given in C. J., X. 266.

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refuse to take the said Oaths and* repeat and subscribe the said Declaration; That then and in such case the said person neglecting to appear or refusing to take the said Oaths and repeat and subscribe the said Declaration, shall incur and suffer all the pains, penalties, forfeitures and disabilities inflicted by the herein first mentioned Act to all intents and purposes, as if such person or persons respectively had refused or neglected to take the said Oaths and to repeat and subscribe the said Declaration by or at the utmost time limited by the herein first mentioned Act for the doing the same. Provided always that there shall be six days at least between the service of the said Warrant and the time for the appearance of the person summoned expressed in the said Warrant; Provided likewise, that the place expressed in the said Warrant for such person's appearance shall not be above the space of fifteen miles from the place of his then abode.

And be it further enacted, by the authority aforesaid, That if any person so summoned as aforesaid, shall not appear according to such summons, or if, upon his or her appearance, shall refuse to take the said Oaths and repeat and subscribe the said Declaration, That in such case, such Justices of the Peace who issued the said Warrant or tendered the said Oaths and Declaration to the person refusing shall [at the discretion of the Justices] commit such person so neglecting to appear or refusing to take the said Oaths or repeat and subscribe the said Declaration to the Common Gaol of the respective County, Riding, Division, City, Borough or place, there to remain without bail or mainprise until they shall take the said Oaths and repeat and subscribe the said Declaration before the same Justices of the Peace, if they shall be living, or two other Justices of the Peace of the same County, *Riding, Division, City, Borough or place*, if they shall be dead.

Provided always, That nothing herein contained shall extend to certain [persons called] Dissenters from the Church of England, *commonly called Quakers*,† who scruple the taking any oath, which persons are [mentioned] *described* in an Act made this present Session of Parliament, intituled An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the penalties of certain laws, so as such persons make such proof of themselves as by the said Act is required, and make and subscribe the Declarations appointed by the said Act to be made and subscribed by them.

Provided, That nothing herein contained shall extend to any foreigner, being a menial servant to any Ambassador or public Agent.

Provided, also, That nothing in this Act shall relate to or have any effect upon any person being a natural-born subject of the King of Portugal, who now is or hereafter shall be a sworn servant to the Queen Dowager, nor to any other servants, being natural-born subjects of their Majesties, as her Majesty the Queen Dowager shall under her hand and seal from time to time for that purpose be pleased to nominate, the said servants so nominated not exceeding the number of thirty at any one time, so as none of the said servants, being natural-born subjects of their Majesties, be a Jesuit, priest, monk or friar, any law or statute to the contrary notwithstanding.

* The word (" and ") is here (Skin 3, line 14) written over an erasure, which no doubt was the word (" or "). This amendment, it is clear, is wrongly stated as the contrary in C. J., X. 266.

† These words, interlined on the Engrossment, are omitted in C. J., X. 267.

Provided, likewise, That nothing herein contained shall extend to any Merchant foreigner, anything in this Act notwithstanding.

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Lastly, it is hereby appointed and directed, That the respective Justices of the Peace, who shall issue any Warrant aforesaid, or tender the said Oaths and Declarations by virtue of this Act, shall from time to time certify the next Quarter Sessions held for their respective Counties, Ridings, Divisions, Cities and Boroughs, their proceedings in the same by virtue of this Act.

Provided also, and it is hereby declared and enacted by the authority aforesaid, That all Rents and Profits of all and every such estate and estates of James, Earl of Salisbury, as shall by virtue of this Act or otherwise by reason of his Recusancy be forfeited, shall in the first place redound unto and be had, held and enjoyed by John Tillotson, Dean of Canterbury and Doctor in Divinity; John Mapletoft, Doctor in Divinity, and John Fisher, of the Middle Temple, London (Trustees or Overseers of the Will of James, Earl of Salisbury, deceased), and the Survivors and Survivor of them and the heirs, executors, and administrators of such survivor, for the use and benefit of, and in trust for the younger children, being Protestants, of the said James, Earl of Salisbury, deceased, until such time and no longer as the respective portions to them, the said younger children, devised or appointed by the said will, and the interest due or to grow due for the same shall be made up and satisfied; And that for that purpose all such rents and profits be (immediately after the time of the said forfeiture) actually vested in the said John Tillotson, John Mapletoft and John Fisher and the survivors and survivor of them, and the heirs, executors and administrators of such survivor, for and during and until the time that the said respective portions shall be made up and satisfied, together with the interest as aforesaid, anything in this or any former Act to the contrary thereof in any wise notwithstanding; Saving nevertheless the right and title of all just and real creditors and legatees whose debts and legacies are chargeable upon the said estate or any part thereof. Parchment Collection. [Brought from the Commons this day and dropped with the Session after a First Reading. L. J., XIV. 314-5.]

143. Oct. 19. Writ of Summons.—Writ of Summons, of date, to Simon [Patrick] Bishop of Chichester.

144. Oct. 21. Writ of Summons.—Writ of Summons, of date, to Edward [Stillingfleet], Bishop of Worcester.

145. Oct. 23. Clandestine Marriages Bill.—Amended * draft of an Act disabling minors to marry without the consent of their fathers or guardians, and against their untimely marrying after the decease of their fathers, and for preventing all clandestine marriages for the future. Whereas minors are daily subject to be inveigled or forced away from their fathers or guardians, and thereupon do contract matrimony with persons unsuitable before they are of years capable to dispose of themselves with that discretion which is requisite; And notwithstanding the severities of former laws, yet there being no provision to [adnull] annul

* The additions are shown by italics and the omissions by square brackets. The former, which are not actually written on this draft, are taken from the Com. Book, being identified by the numbers in the margin.

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such marriages,* wicked persons presume they shall afterwards obtain the consent and reconciliation of friends, and are thereby encouraged to the said evil practices; and whereas clandestine marriages are and have been found to be of very pernicious consequence, and have given occasion to many wicked practices and disorders in families; Be it enacted by the King and Queen's most Excellent Majesties, with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by authority of the same, that from and after the *first* day of *February* one thousand six hundred, eighty nine, it shall not be [in the power of] *lawful for* † any son being under the age of one and twenty years, nor [in the power of] *lawful for* † any daughter being under the age of eighteen years to marry him or herself or to make any matrimonial contract of any kind whatsoever, except his or her father, in case he be then living, or his or her guardian or guardians after the decease of the father, or the major part of them if more than two, shall be present and consenting thereunto, or shall have given consent by writing signed in the presence of two or more credible witnesses precedent to such marriage, but all such minors without such consent or being present are hereby made incapable and disabled to marry or make any matrimonial contract, and all marriages and matrimonial contracts that after the said *first* day of *February* shall be made without such consent or being present as aforesaid, shall be and are hereby enacted to be null and ipso facto void to all intents and purposes whatsoever. †

§ II.—And be it further enacted that after the death of the father it shall not be in the power of any son of such deceased father being under the age of eighteen years to marry himself, or make any matrimonial contract although with the consent of his guardian or guardians; nor shall it be in the power of any daughter of such deceased father, being under the age of sixteen years, to marry herself or make any matrimonial contract although with the consent of her guardian or guardians, but that notwithstanding such consent the marriages of such minors after the death of their fathers under the said respective ages of eighteen years if sons and sixteen years if daughters, shall be and are hereby enacted to be null and ipso facto void to all intents and purposes whatsoever. §

* It was proposed in Annex (a) to read here instead: ("yet there being no sufficient provision against such marriages"). Another proposed amendment (Annex (b) below) was to read ("former laws, yet wicked persons still presuming that they shall afterwards obtain the consent and reconciliation of friends, are thereby encouraged to the said evil practices").

† These two amendments appear on Annex (b) below as well as in Com. Book of 11 Nov.

‡ The words preceding, viz., from the last word ("contract") to the end of this clause, were originally omitted by the Sub-Committee (Com. Book, 11 Nov.), this omission being one of the amendments proposed in Annex (b) below. They were reinstated afterwards, by direction of the House, at the request of the Sub-Committee which had omitted them. See notes at end of text.

§ Annex (a) below, proposes to add after ("intents and purposes") the following ("of law whatsoever, so that no marriage so contracted shall ever be allowed in any Court of Judicature, nor shall any wife so married be admitted to any dower, thirds or the communication of her pretended husband's honours or any other of the rights or advantages that might have arisen from their pretended marriage, if it had been lawfully made, nor shall the children descended from any such marriage be capable of succeeding to either honour or estate, but shall be and are hereby declared to be illegitimated and under all the disabilities of law in that case, which shall and can never be purged by any pardon or restitution or by any other way whatsoever, all which are declared to be void and null and of no effect whatsoever; But that notwithstanding this, they shall not be capable of contracting any other marriage during their joint lives.")

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§ III.—And be it further enacted that in case of any *marriage* or pretended marriage had by such minors against the true intent and meaning of this Act, no right or title to any goods or chattels or to any dower or tenancy by the curtesie, or to demand any Letters of Administration, or any benefit of any law or custom whatsoever shall accrue by reason of any such pretended marriage; *nor shall any woman in case of such marriage or pretended marriage be entitled thereby to have or take any benefit or advantage by title or precedency or by any other way or manner from or by reason of any title of honour of such husband or pretended husband, nor shall the child or children of such persons so married or pretended to be married be capable of inheriting or taking by descent from suah father or mother any honour, lands, tene-ments or hereditaments nor to demand or take forth any Letters of Administration to any person or persons or to have or take the benefit of any law or custom whatsoever*; * and it shall and may be lawful for the father or guardians or any other friend of any such minor to prosecute in the name of any such minor or in his own name in any ecclesiastical court where the matter may be cognisable any cause of jactitation of marriage or other suit whereby to have such pretended marriage declared null and void, and without any let or contradiction of any such minor during such time as such minor shall continue under the respective ages wherein he or she are disabled to contract matrimony according to the true intent and meaning of this Act.

§ IV.—And be it further enacted that if any guardian shall be any way contriving, [privy] *aiding* or consenting to any such pretended marriage or matrimonial contract of any minors contrary to the true intent and meaning of this Act, that thereupon such guardian shall be and is hereby declared for ever incapable of holding or enjoying any employment, profit, place or office either ecclesiastical or civil, and shall also forfeit the value of one-third part of the estate, real or personal, of the minor to whose pretended marriage he hath been so contriving or consenting, and that the right, title and interest to the custody or guardianship of any such minors shall remain and be in the other guardians or guardian that was not contriving, [privy] *aiding* or consenting to such marriage, if there be any such, and if there be none such, then the said custody and guardianship shall come and be and is hereby vested in the next of kin to such minor that is of full age, *being a Protestant*,† to whom the estate of such minor cannot immediately descend by course of inheritance, and the value of the said third part to be recovered in any of their Majesties' Courts at Westminster by action of debt, bill, plaint or information, wherein no essoign, protection or wager of law shall be allowed, the one moiety to the poor of the parish where the guardian or guardians so offending shall reside, which said moiety to be appropriated to the orphans and poor of the said parish to the putting them apprentice, and the other moiety to the informer.

§ V.—And be it further enacted, that in case any domestic or menial servant shall take upon him or her to make any pretended marriage or matrimonial contract between him or herself and any the children or pupils of his or her master or mistress during such their minority, or if any such servant shall seduce or betray or be knowingly aiding and assisting to

* This clause in italics is taken from Annex (b) below. It was agreed to by the Sub-Committee on 11 Nov. (Com. Book.). Another amendment proposed in Annex (b), but not mentioned in Com. Book as agreed to, was to leave out the words that follow, viz. ("and it shall") to the end of this clause.

† This Amendment appears on Annex (b) below as well as in Com. Book, 11 Nov.

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inveigle such child to marry any other in such manner as [that the same is by this Act declared to be invalid, null and void] *aforsaid*,* That then and in every such case, such servant, being lawfully convicted thereof, shall be committed to prison, there to remain by the space of three years in some House of Correction in the county where the said offence was committed, without bail or mainprize and there to be kept to hard labour and receive correction in the same manner as rogues and vagabonds ought to have by course of law.

§ VI.—And be it further enacted by the authority *aforsaid*, that whosoever, not being a household servant in the family, shall make any such pretended marriage or matrimonial contract or be knowingly aiding or assisting to the same, or shall inveigle and marry any such minor, he or she so marrying or being knowingly aiding or assisting to the same shall forfeit one-third part of what he was really worth at the time the fact was committed, one moiety whereof shall be to the informer and the other moiety to the uses of the poor, as the other forfeitures are directed, to be recovered by action of debt, bill, plaint or information in any of their said Majesties' Courts of Record, wherein no essoign, protection or wager of law shall be allowed, and shall also suffer three years' imprisonment in the common goal without bail or mainprize.

§ VII.—And be it further enacted by the authority *aforsaid*, that if any Chancellor, Commissary or official or their Surrogates or any other person having or pretending to have power to grant licences to marry, whether in places of ordinary jurisdiction, or in any exempt, peculiar or privileged place, shall after the said *first* day of *February* grant any license for the marrying of any person (not being in the estate of widowhood) whose parents or one of them are living, without the consent of such parents or parent personally present or a certificate of such consent signed and sealed by such parents or parent in the presence of a justice of the peace of the county where such parents or parent shall then dwell, and attested by the said justice of the peace under his hand and seal and by the oaths of two credible witnesses who have heard the parents or parent declare their or his consent and seen the said certificate sealed and subscribed by them or him and the said justice of the peace, or shall grant any license for the marrying of any minor whose parents are dead without full proof upon the oath of two credible witnesses that such minor is at least of the age of eighteen, if male, and sixteen, if female, and likewise without the consent of his or her guardian or guardians personally present, or a certificate of his or their consent signed and sealed by such guardians or guardian in the presence of a justice of the peace of the county where such guardians or guardian shall then dwell, and attested by the said justice of the peace under his hand and seal and by the oaths of two credible witnesses who have heard the guardians or guardian declare their consent and seen him or them and the said justice of the peace subscribe and seal the said certificate, then every person *aforsaid* granting such license shall forfeit five hundred pounds, to be recovered and disposed of as the other forfeitures in this Act are directed, and shall also lose and forfeit his office by reason or pretence whereof he was empowered to grant licenses of marriage, and all other ecclesiastical promotions, and be disabled for ever after to hold that or the like office or any other ecclesiastical or civil office, benefice, place or promotion whatsoever.

§ VIII.—And be it enacted by the authority *aforsaid* that any person in Holy Orders or pretending to Holy Orders, who shall marry or join

* This amendment appears on Annex (b) below as well as in Com. Book, 11 Nov.

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in marriage such minor without such license as is directed by this Act or without the publication of the banns in manner as is by law appointed, shall be and is hereby adjudged a felon and shall suffer death as in case of felony without benefit of clergy, and that the father of such minor, and for want of such father, the mother, and if there be no father or mother, then the guardian not consenting to such marriage, and for want of such guardian, or in default of prosecution by such guardian or any other person aforesaid for the space of twelve months after such marriage, then the next of kin of such minor shall have an appeal of felony against such person and persons in Holy Orders or pretending to Holy Orders and shall have the suit to pursue the same, to have them convict of life, wherein the defendant shall not be received to wage battle, but that the truth of the matter shall be tried by inquisition of the country, neither shall any pardon be pleaded in bar of such suit or in stay of judgment or execution of the same.

§ IX.—Provided always that where the City of London or any other city or corporation have right to the guardianship or custody of any orphan, their consent in writing under their common seal to any marriage shall be sufficient within this law, according to the limitation of ages for minors before expressed.

§ X.—[Provided also that no marriage shall be impeached by virtue of this Act where the parties shall cohabit until their respective full ages of five and twenty years, if males, and one and twenty years, if females, without any actual separation or suit commenced in some of their said Majesties' Ecclesiastical Courts for declaring the nullity of such marriage during such their minority, but that all such marriages shall be taken to be had with due consent, according to the rules and provisions of this Act].*

§ XI.—Provided also that where the father of any minor shall by his last will or any other writing signed and attested as abovesaid, testify his approbation or consent to any marriage to be had by any of his children, and such marriage be accordingly had after his death, that such marriage shall be as valid as if he had been living and present and consenting thereunto.

§ XII.—And for the preventing of all other irregular and clandestine marriages for the future, Be it further enacted that if any parson, vicar or curate of any parish church or chapel, or the minister of any exempt, peculiar or privileged place, or any other person in Holy Orders, or pretending to be in Holy Orders shall from and after the said *first* day of *February* officiate in the marriage of any persons without such publication of the banns as by law is required, or without license first had and obtained from such person as hath authority to grant licenses for marrying in the place where the parties to be married or one of them doth inhabit or reside, or shall officiate in such marriage at any other time or in any other place than by law is appointed, then every person so officiating shall for the first offence be suspended ab officio et beneficio, and be committed to the common goal, there to continue for three years without bail or mainprize, and for the second offence shall be deprived of all his ecclesiastical benefices and preferments, and be incapable of any such benefices or preferments for ever, and if he hath no such benefices or preferments, he shall be divested of his canonical habit and degraded from his ministry by the bishop of the diocese, and be com-

* The omission of this proviso is one of the amendments proposed in Annex (b) below and agreed to by the Sub-Committee (Com. Book, 11 Nov.).

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mitted to the House of Correction for one year, there to be kept to hard labour and treated as rogues and vagabonds use to be.

§ XIII. *And be it further enacted that no person or persons shall be pardoned or discharged of any the offences, penalties or disabilities committed against or imposed by this Act, but are hereby made incapable of any pardon for the same from the King and Queen's Majesties their heirs and successors, unless by Act of Parliament, wherein such person and persons shall be particularly named.*

§ XIV. And be it further enacted by the authority aforesaid that this Act shall be publicly read presently after Divine Service upon some Sunday before the said *first day of February* in every church and chapel within the Kingdom of England, Dominion of Wales and town of Berwick-upon-Tweed, *and shall also be read yearly in all churches and chapels the last Sunday in Lent.* [This Bill, as introduced and read 1st this day (L. J. XIV. 322) is identical with the Bill of 27 July 1689 (No. 130), as then finally amended, except that the dates are here left blank. On 30 Oct., after being partly considered in C. W. H., it was referred by the House, on report, to a Sub-Committee, (L. J. XIV. 329), assisted by one of the Judges (*ib.* 331). This Sub-Committee met on Nov. 8, 9 and 11, the Bishop of London being Chairman on the first two days, and E. Rochester on the third. On 9 Nov., after considering the first two clauses, they agreed that there should be only a nullity in point of law, and directed Mr. Baron Nevill to amend the Bill accordingly. On 11 Nov. he offered amendments (*See Annexes (a) and (b) below*) in pursuance of his directions, some of which the Committee agreed to. *Proposed*, that the minor that shall marry without consent shall be made incapable of inheriting his own estate. *Ordered* to report that the Committee having at a former meeting agreed to leave out the nullity of marriage made without consent of parents, etc., but having this day found it impracticable to make the Bill effectual without such a nullity, desire to have leave of the House to insert the clause of nullity again. (Com. Book.) This report was made on 15 Nov.* (L. J. XIV. 343), the E. Rochester informing the House that the Committee had entangled themselves by a vote, which they desired to be relieved ~~in~~, for putting out the clauses of nullity; by their first vote they were out, and at a second meeting they found there was an occasion for them to stand. *Ordered* that the Bill be recommitted to the same Committee, and that the annulling the marriages shall stand part of the Bill. *Question* proposed; Whether the Bill shall be recommitted with directions that the nullity of the marriages shall stand in the Bill? Resolved in the affirmative. Contents 24; Not Contents 15. Tellers, L. North and E. Abingdon. (MS. Min. 15 Nov.)—On 18 Nov. the Sub-Committee, on re-commitment, L. Cornwallis in the chair, further amended the Bill by adding the final provision for reading the Act yearly in churches on the last Sunday in Lent; by altering ("ad null") to ("annul"); by substituting twice ("riding") for ("privy"); and by inserting the date ("first day of February") in the spaces left blank.† These amendments were reported and agreed to on the same day (L. J. XIV. 345). The Bill dropped in the Commons, without even a first reading, though the Lords sent a message on 16 Jan. 1689-90 to remind them of it. (*ib.* 415. C. J. X. 290, 337).]

* The report appears to have been offered by E. Rochester on the 14th, but ordered to be made the next day. (MS. Min.)

† This date had been originally agreed on in C. W. H., when the Bill was first considered. (MS. Min., 30 Oct.)

Annexed :—

- (a.) Nov. 11. Paper of proposed amendments. [The contents are given in the notes to the text of the Bill. This or the next paper was no doubt the list of amendments offered to the Committee this day by Mr. Baron Nevill, Com. Book.]
- (b.) Nov. 11. Paper of further amendments. [The contents are given in the notes to the text of the Bill. See preceding paper.]
- (c.) Nov. 11. Clause marked A. ("And be it further particularly named"). [This amendment is incorporated in the text of the Bill.]

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146. Oct. 24. *Beaple v. Gay*.—Petition of Thomas Beaple, Gent. Devisee of Richard Gay. The causes of *Gay v. Gay and Tynt et c* coming to be heard in Chancery, in the lifetime of the Plaintiff Richard Gay, and the sole question being whether Richard Gay, or Martha Gay, the relict and pretended devisee of Anthony Gay, deceased, (Richard's younger brother), was entitled to redeem a mortgage made by Richard and Martha to Sir Halswell Tynt of certain lands in Devonshire (the estate of Richard) for £4,000, the Lord Keeper North decreed the redemption to Richard and an account between Richard and Martha for what was pretended to be due to her, but before the account taken or the mortgage redeemed, Richard died without issue, devising by will his estate, after payment of his debts, to Petitioner, his near kinsman, whose ancestor had given Richard most of his estate. Petitioner and Richard paid nearly £2,000 of the mortgage money, and Petitioner intended to have paid off the principal and also the rest of Richard's debts and what should appear due on the said account. Martha, however, brought a Bill of Review and the L. Chancellor Jeffreys having overruled Petitioner's demurrer, the Lords Commissioners set aside the Decree and decreed redemption to Martha. Appeals from this later decree. Anthony, after having obtained a voluntary settlement from his brother Richard under pretence of paying his debts, suffered Richard to be sued and imprisoned for those debts and took possession of the estate, as well as of all Richard's personal estate (not in the trust), so that Richard, to gain his enlargement, was forced to join in the mortgage and permit Martha to receive the money (which she never applied to the debts) and covenant to pay the mortgage money, notwithstanding which, he was again imprisoned by Martha for debts which ought to have been discharged out of the mortgage money received by her and for £3,000 pretended to be due to her, in which imprisonment he continued till his death, so that Anthony and Martha, neither having performed the trust and intention of that voluntary deed, ought not to have had any further advantage thereby than satisfaction of what they had paid, which was provided for by the Lord Keeper's decree. Prays that Respondent may be ordered to answer and proceedings may be stayed. Signed by Appellant; countersigned George Hutchins. Endorsed as read this day. [The Appeal was heard and dismissed on 13 Nov. (L. J., XIV., 341). *Serjeant Hutchins* (for Appellant) opens the case and states how the estate was settled. The manor of Pulsborough is the trust lands. I insist that L. Keeper North's decree was just. *Sir William Williams* (for Appellant): Speaks as to its being a security, and so the decree ought to be reversed. They decreed Beaple to give the estate to Martha. We complain of this injustice. Richard contracted great debts; must all these debts be lost? Deed of lease and release of 1671 read. *Mr. Finch* (for Respondent): Richard Gay comes to his brother, to desire him to pay his debts, and makes a settlement on his brother

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Anthony. He goes and overthrows the deed of settlement. We have paid above £3,000. out of our own pockets. *Mr. Ward* (for Respondent) is heard. (MS. Min.)]

Annexed :—

(a.) 2 Nov. Answer of Martha Gay, Widow. Appellant's plea and demurrer to the Bill of Review were overruled after a full hearing on 21 July, 1688. The original causes were reheard on 11 May 1689 (having been postponed from the previous Michaelmas term, in consequence of the then troubles), and the Lords Commissioners decreed redemption to Respondent. The late Richard Gay, being much in debt in 1669 applied for assistance to his brother Anthony, a merchant of Bristol, and one of his creditors, and in 1671, in consideration that Anthony had by bonds undertaken the payment of his debts, conveyed to him his estate in question, as to part thereof, to the use of Richard for life, with remainders for life successively to his wife for her jointure, his sons and daughters in tail and in default of such issue, the remainder to Anthony in fee, and as to the residue, to the use of Anthony and his heirs, in trust for payment of his debts, the surplus unsold to Richard for his life, with power of leasing the same for lives, and afterwards to his sons and daughters in tail, and, in default of such issue, to Anthony's right heirs, in which conveyance Richard covenanted to join with Anthony in selling or letting the estate for raising money to pay Richard's debts, and Anthony covenanted to perform the trust as far as he was enabled to do, and this settlement was made by Richard to Anthony without any power of revocation. Anthony, thereupon, called in his own stock in trade and paid upwards of £3,000 of Richard's debts, but Richard to hinder the sale of his estate, absconded. Anthony died three years after undertaking the trust, leaving by will his estate to Respondent, his wife, and others subject to the performance of the trust and the payment of Richard's debts. Richard afterwards, who had been found out by Respondent at great expense, seemed desirous his debts might be paid, and for this purpose Respondent joined with him in a mortgage to Sir Halswell Tynt for £4,000, providing that Respondent should have a regrant of the estate after the mortgage money was paid. Richard was never imprisoned by Respondent, but for more than seven years before his death received the rents of the estate, without paying the interest of the mortgage money, and granted divers leases under their proper value and committed waste by felling timber and otherwise, contrary to his own deed of settlement. Richard did not die in prison, and neither claimed nor had any of the estate from Appellant's ancestors. Appellant is a remote relation of Richard and may have paid some small part of the interest due on the mortgage, but not all nor near so much as he has received out of the trusted estate in question. Prays that the Appeal may be dismissed with costs. *Signed* by Respondent; *countersigned* Nic. Hooper. *Endorsed* as brought in this day.

(b.) 2 Nov. Petition of Respondent for an early day for hearing. L. J. XIV., 331.

(c.) 6 Nov. Petition of Appellant for some further day for hearing, the order obtained by Respondent having taken him by surprise. L. J., XIV. 333.

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147. Oct. 24. *Dod v. Dawson*.—Petition and Appeal of Timothy Dod from a Decree of the Court of Chancery of 6 July 1689. Charles II., by Letters Patent under the Great Seal, dated 26 February 1676, for £200,000 advanced in his Exchequer by George Dashwood, Samuel Dashwood, William Roberts, John Friend, Felix Calverd, Thomas Rowney, William Strong, and Edward Buckley, demised to them his revenue of excise on beer, ale, and other liquors in England and Wales for the term of three years from 24 June 1677, at the rent of £560,000 per annum, which said £200,000 with interest was agreed to be repaid and retained out of the said rent at several days and times as by the Letters Patent directed. It was agreed that each of the lessees should raise and advance one-eighth part of the loan, and have one-eighth part of the profits of the farm. Sir John James, Robert Huntingdon, William Dawson, and Lemnell Kingdon, being jointly concerned in a bank or credit for raising of money, agreed to advance a moiety of the £25,000 to be found by Strong, and Dawson was to be concerned with Strong with a moiety of his profits, and indentures of partnership were executed accordingly. Petitioner having married one of Huntingdon's daughters, Huntingdon agreed that the fourth part of the moiety in which Dawson was concerned with Strong, should go to the benefit of Petitioner, except only the £12,000 and interest advanced by Dawson, and thereupon Dawson, together with James, Huntingdon, and Kingdon, became bound by writing obligatory in 1680 to Petitioner in £2,000 to satisfy Petitioner a full fourth part of all such profits as Dawson should receive from Strong for his moiety of Strong's eighth part of the farm. Dawson received profits amounting to upwards of £2,100, whereof £1,060 belonged to Petitioner, and on Dawson refusing to pay, Petitioner sued him on the bond at Common Law. Thereupon in June 1685, Dawson brought a bill in Chancery to be relieved against the Bond, suggesting it was given in trust for Huntingdon, one of the obligors. The Court of Chancery on 16 Nov. 1686 directed a trial at law to be had whether the Bond was given in trust for Huntingdon or for Petitioner's own use, and whether Dawson had notice of the trust and when. On a trial at King's Bench before the L. C. Justice, a verdict was given for Petitioner; and a motion for a new trial being refused, the cause came again to be heard in Chancery on 15 April 1687, when an account was directed to be taken of what was due on the Bond and Dawson was ordered to give security for payment. Dawson, having procured a rehearing on 31 May 1687, pretended that the money due on the Bond belonged to the King, but the Court declared that they would consider to whom the money belonged, after an account was taken and security given, as before directed. But Dawson did nothing, and the injunction formerly granted in Chancery was dissolved, and after Petitioner had proceeded at Common Law and got judgment on the Bond, Dawson obtained a rehearing before the Lords Commissioners of the Great Seal, who on 6 July 1689, notwithstanding the verdict and all the previous proceedings, decreed the Bond to be delivered up to Dawson, and awarded a perpetual injunction against it. Petitioner appeals against this Decree, and prays that Dawson may be ordered to answer. *Signed* by Appellant; *countersigned* Ambrose Phillipps and J. Trevor. [The Appeal was heard on 3 Dec. *Sir Ambrose Phillipps* (for Appellant) opens the case. Mr. Dashwood and partners took the farm of Excise for three years from Midsummer, 1677. One Strong agrees with Dawson for one-sixteenth part of the farm. The Bond is dated after the farm ended. The Question is not whether Dod paid the money upon Huntingdon's order, but whether Dawson knew Mr. Dod was in trust for Huntingdon. Upon issues directed it was

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found that Dod was not a trustee. *Mr. Ward* (for Appellant): The question is, whether the bond was a trust for Huntingdon or not. Recites the condition of the bond. At the time the bond was entered into, Dawson must have known that Dod ought to have his part and share. Dod puts his bond in suit. We hope we shall be quieted. *Sir William Williams* (for Respondent): These gentlemen were farmers of the Excise, as is set out by them. A fourth part of this is in dispute. They are judges in their own cause. If Huntingdon had taken the bond, it should have been evidence against him. The L. C. Justice Herbert was right in the issue. L. Chancellor Jeffreys ordered the bond to be delivered to the Register. It is a constructive trust, and the Statute of Frauds provides against such trusts. They all give the like bonds, actually in the hands of other persons. *Mr. Holles* (for Respondent): The four partners had no great estate at first. They took up great sums of money. Dawson never received a farthing of this money. A resulting trust is excepted out of the Statute of Frauds. We have two witnesses to prove all this, and that it was paid in for Huntingdon's use and paid out by Cadwell for Huntingdon's use. (Cadwell's deposition being offered to be read, the other side excepted to it. They reply, and show that he was continued bail.) We appeal from the Judgment. *George Stanlake* sworn to the truth of a record he examined 7 Nov. 1688. Counsel withdraw, for House to consider whether Cadwell's deposition shall be read, he being bail. The House disallows it, he being a party concerned. Counsel called in again and informed accordingly. Deposition of Wm. James read, Counsel asked wherein the hurt had been, if the trust had been mentioned in the bond? *Mr. Holles* answers to this. The Speaker then stated the case, and after reading the clause in the Statute of Frauds, the House reversed the Decree of the Lords Commissioners and confirmed the Order of 15 April 1687. L. J., XIV. 359. MS. Min.]

Annexed:—

(a.) 13 Nov. 1689. Petition of Appellant. Respondent has not yet thought fit to answer, though ordered so to do by the 4th instant. Prays that a day may be appointed for hearing. L. J., XIV. 340.

(b.) 18 Nov. 1689. Answer of William Dawson. Respondent, together with Huntingdon (since deceased), James and Kingdon took to farm two sixteenths of the excise for the term of three years, one-sixteenth part of Rowney and another of Strong, which shares were taken in Respondent's name in trust for the rest of his partners, because Huntingdon and James, being then Commissioners for the Excise, could not appear to be farmers thereof. Respondent and his partners advanced £20,000 for the said two sixteenth parts, and all profits of the farm were paid into their bank to their cash-keeper, and no part to Respondent. The farm being near expired, the partners, for securing their respective shares, agreed that each should name two persons in trust for himself, to each of which Respondent and his other three partners should jointly give bond of £2,000, so conditioned that when Respondent should have an account and receive the profits of the two sixteenth parts, he should pay one-fourth of the profits of each sixteenth part to such trustees. Thereupon Huntingdon named the Appellant, his son-in-law, his trustee in one of the bonds, which is the bond in question, and named his other son-in-law, Mr. Breeden, his trustee in the other bond; and Respondent and the other partners named two trustees in

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like manner, and bonds were respectively given to them accordingly. The farm being expired and the profits paid into the bank, Huntingdon with the other partners examined and approved of the accounts, and the bond in question ought to have been delivered up, for though the farm was taken in Respondent's name, the profits were not paid to him but to the cashier of the bank, approved by all parties, who by their order issued the same again partly in paying the debts on the partnership and partly in several great undertakings wherein there happened to be loss. Huntingdon died four years afterwards, very much in debt, leaving Appellant his executor, who finding the Bond in his name, put it in suit against Respondent, who thereupon brought his Bill in Chancery for relief. The question touching the bond, which was reserved for a trial at law, was a matter of trust which arose from construction and not a matter of fact for a jury. In this trial Respondent was non-suited, being unable to produce a declaration in writing of the trust, as the Act required, and a hearing being obtained *ab integro*, L. Chancellor Jeffreys caused the Bond in question to be taken from Appellant, pretending to seize it for the King's use, and without allowing Respondent to read any depositions, decreed him to give an account and find security to abide by its result. This decretal order, however, was never drawn up, and Appellant proceeded on the Bond at Common Law, though the same was taken from him, and by surprise got a judgment against Respondent by *nihil dicit*. Respondent then petitioned the Lords Commissioners who, on rehearing the cause, declared the trust of the Bond was a trust arising from construction, and, as such, fit for the judgment of the Court and not for a trial at law, and decreed further that the Bond was in trust for Huntingdon and that Respondent ought to be discharged thereof, and that the same should be delivered up to Respondent, and that Appellant should acknowledge satisfaction on the judgment. Prays that the Appeal may be dismissed with costs. *Signed by Respondent; countersigned Henry Penton.*

148. Oct. 25. Writ of Summons.—Writ of summons, dated 23 Oct., to Gilbert [Ironsides] Bp. Bristol, who took the Oaths this day. L. J., XIV. 325.

149. Oct. 25. Stoppages in the Streets (Green).—Order to prevent stoppages in the streets, made on complaint of stoppages in King Street, Westminster. L. J., XIV., 325 *In extenso*. Endorsed is an Affidavit of *Rich. Townsend*, Constable, and *James Lovelace* and *Thos. Isaacson*, Beadles, that John Bayly, drayman to William Green, Brewer, being stopped by them at Whitehall Gate from coming into King Street on Wednesday last, between 11 and 12 a.m., said he would go through and abused them; of *David Lewis* that the drayman called the Beadle that stopped him a rogue, and another drayman standing by said if he knew the beadle, he would have a touch with him at quarter-staff; and of *Edward Darling* that Green's drayman asked him the beadle's name, for his master would spend £100 to vindicate his servant. Sworn 28 Oct. 1689. [The Affidavit was read this day. MS. Min. of date. See L. J., XIV. 327, 329.]

150. Oct. 28. *Presgrave v. Sherman*.—Petition of William Presgrave, Esq. Petitioner conceiving himself entitled by purchases to a certain messuage in Southwark, exhibited a bill of discovery in

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Chancery, and the Court directed an issue for trial of the title at law, but by corruption of the person employed by Petitioner, the merits were never fairly tried. Petitioner then moved the Lords Commissioners of the Great Seal that the order for the hearing might be reinforced, but on false suggestion made in Petitioner's absence, the Court rejected that motion. Appeals to their Lordships for a hearing at the Bar. Signed Wm. Presgrave. In a similar hand is written "We humbly conceive the Petitioner has just cause of Appeal. Rich. Osborne, Edmond Prideaux." L. J., XIV., 327. [The Appeal was heard and dismissed on 25 Nov., (*ib.* 353), *Mr. Darnell* and *Sir William Williams* appearing for Appellant, and *Sir Francis Winnington* and *Mr. Philmore* for Respondent, MS. Min.]

Annexed:—

- (a.) 2 Nov. 1689. Petition of Appellant. Respondent, in contempt of their Lordships' order to answer, turned Petitioner and his family out of their dwelling-house. Prays the House to take notice of this contempt. L. J., XIV., 331. MS. Min.
- (b.) 11 Nov. 1689. Answer of Thomas Sheirman. The Appeal is purely vexatious. Respondent owned the piece of land claimed, and in 1680 let it to Thos. Holland for 36 years at a yearly rent of £42. Holland assigned the lease to Mary Askew, widow, since married to W. Barnes, who assigned it to Petitioner, and for non-payment of rent, Respondent, according to a proviso in the lease, entered, whereupon Appellant brought his bill in Chancery, falsely alleging that the messuage of one Jones, that lay contiguous to the land, was comprised in the lease. An issue at law was directed on this point, and it was proved that Respondent was never owner of Jones' tenement. Prays that the Appeal may be dismissed with costs. Counsel signing is Fra. Winnington. *Endorsed* as brought in this day.
- (c.) 2 Dec. 1689. Petition of Robert Presgrave. Petitioner being young and ignorant in all matters of law, has unfortunately offended their Lordships by setting the Counsels' names to his father's Petition. Is sorry for the offence, and prays to be discharged from restraint. *Endorsed*: Read 2 Dec. 1689. Nothing done on it. MS. Min. of date. No entry in L. J. [The Counsel, whose names appear on the Petition of 28 Oct. were ordered on 25 Nov. after the cause had been heard, to attend and give their reasons for having signed the Appeal, as was supposed. On 28 Nov. they attended and denied having signed it, and Rob. Presgrave then owned to having done so. (MS. Min. L. J., XIV., 353, 356.)]
- (d.) 5 Dec. 1689. Petition of same, to same effect as preceding. L. J., XIV., 361.

151. Oct. 28. Absent Lords (Call of the House).—Letters in answer to summons ordered to be sent by the Speaker [Atkyns] to the Lords living more than 40 miles from London, who were absent from the House this day, requiring them to attend on 11 Nov. L. J., XIV., 328.* [There was a Call of the House this day, pursuant to Orders of Oct. 19 and 23. (*ib.* 321, 323.)]

* With regard to E. Clare, who was also found absent this day, the House on 7 Nov. was acquainted on his behalf by the Lord Privy Seal that he was sick and desired to be excused, or, if the House expected it, would send up two witnesses to attest it. His excuse was not excepted. (MS. Min. No entry in L. J.)

The letters are as follows:—

- (a.) 5 Nov. (D. Somerset).—Is heartily sorry he cannot obey the commands of the House, having business of great consequence that will keep him in the country three weeks longer. Begs for leave to stay for this purpose. *Dated* Petworth, 5 Nov. 1689.
- (b.) 7 Nov. (D. Newcastle).—Will send two servants to attest on oath that he is not able to travel, the truth being he is a dying body. *Holograph. Dated* Welbeck, 2 Nov. 1689. [Read this day. MS. Min.]
- (c.) 7 Nov. (E. Rutland).—Is under a course of physic for a violent fit of a convulsive cholic in his stomach. If he can undertake a winter journey, he will come; but if otherwise, he will send two servants to attest his condition. *Dated* Belvoir, 2 Nov. 1689. [Read this day. MS. Min.]
- (d.) 11 Nov. (E. Yarmouth).—Desires to be excused on the ground of indisposition. *Dated* 6 Nov. 1689. [Read this day; allowed further time. MS. Min.]
- (e.) 11 Nov. (E. Berkshire).—Begs L. Delamere* to acquaint the House that he is suffering from the gout. *Undated*. [Read this day. MS. Min.]
- (f.) 11 Nov. (Bishop of Coventry and Lichfield).—Has sent two persons to satisfy the House of his great weakness and infirmity of body. *Dated* Coventry, 6 Nov. 1689. *Endorsed* as read this day. L. J., XIV., 337.
- (g.) 12 Nov. (E. Lichfield).—Desires to be excused attending the House on account of affairs of great consequence in the country. *Dated* 6 Nov. 1689. [Read this day; 14 days (MS. Min. say 10 days) allowed. L. J., XIV., 338.]
- (h.) 12 Nov. (L. Coventry).—Desires to be excused, being too indisposed with pain to make the journey. *Dated* Crombe, 8 Nov. 1689. [Read this day; 10 days allowed. MS. Min.]

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152. Oct. 30. Church Rates etc. Bill.—Amended† draft of an Act for the better payment of Church Rates, Small Tithes and other Church duties, and for the better passing of Churchwardens' accounts. For as much as the fabrics of divers parochial churches and chapels, and the value of poor vicarages within this Realm are daily growing into great decay, because that very many persons do refuse to pay their Church rates, small tithes and other ecclesiastical duties and charges; And whereas by a statute made in the two and thirtieth of King Henry the Eighth, cap. 7, intituled An Act, How Tithes ought to be paid, and to be recovered, being not paid, It is enacted that if any person or persons, after definitive sentence given against them in the Court ecclesiastical, obstinately and wilfully refuse to pay their tithes, or such sums of money adjudged wherein they are condemned for the same, that then two Justices of the Peace for the same shire where the person condemned doth inhabit, shall have authority, upon information, certificate or complaint to them made, by writing, by the ecclesiastical judge that gave the same sentence, to cause the same party so refusing to be attached and committed to the next gaol, there to remain without bail or mainprise till he or they find sufficient sureties to be bound by recognizance or otherwise before the same

* This letter is addressed, not to the Speaker, but to L. Delamere.

† The additions are shown by italics, and the omissions by square brackets. These amendments, which are not actually written on the draft, are taken from the Com. Book (14 Nov.), being identified by the references given in the margin.

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Justices to the use of our Sovereign Lord the King, to perform the said definitive sentence and judgment, as by the said Act, relation being thereunto had more at large, appeareth; Be it now enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That if hereafter any suit or complaint shall be brought in any Court ecclesiastical, concerning Church Rates, Small tithes or offerings, oblations, obventions, or other Church duties to the Clerk or Sexton of the parish, or touching the passing or refusing to pass Churchwardens' accounts and paying over the remainder to the Churchwardens that shall succeed, the ecclesiastical judge in all and every such suit and complaint for and concerning all and every of the causes aforesaid, shall have power to call both the parties before him, and in case any party so called and being duly summoned, shall contumaciously absent himself for the space of one Calendar month after the return of such summons, that in such case it shall and may be lawful for the ecclesiastical judge to declare the party so called or summoned to be taken pro confesso, and if both parties shall appear, then the said Judge shall and may hear and examine the matter summarily according to the course and process of the said ecclesiastical laws, and to (*sic*) examine witnesses upon oath vivâ voce, and having heard and examined the whole matter, or in case of either of the parties contumaciously absenting themselves as aforesaid and being declared pro confesso, the said ecclesiastical judge shall by interlocutory decree order, judge and determine the same, as well principal as costs, and monish the party condemned to pay and satisfy the same accordingly; which if any person or persons, being so monished, shall neglect or refuse to do or perform the said judge his order or judgment,* *then the ecclesiastical judge shall certify two of the justices of the peace of the same county, and the said justices shall issue out their warrant to distrain the goods of the person or persons against whom such judgment is passed, and in case no distress can be found, then the same remedy shall be had and used in every of the said causes as by the fore-recited Act is given and provided in the cases of tithes† and not otherwise.*

[And be it further enacted by the authority aforesaid, that in case the person against whom sentence is given shall withdraw himself and cannot be apprehended, and it shall be so certified to the said justices according to the aforesaid Act, or if apprehended and committed, shall wilfully and obstinately lie in prison by the space of one Calendar month, that then it shall and may be lawful for the said two Justices for the County or two Justices for any city, borough or town corporate where there are Justices, to issue out their warrant under their hands and seals to the constables and Churchwardens of such parish where the person condemned doth inhabit, willing and requiring them and either of them by distress and sale of the parties' goods to levy the sum adjudged, as well principal as costs, for present satisfaction of the party concerned, together with reasonable charges for the said distress, rendering the overplus (if any be) to the owner.]

And be it further enacted by the authority aforesaid, that if any party or witnesses, being sufficiently and duly cited, shall not appear in

* This amendment is taken from Com. Book, 14 Nov., and annex (b) below.

† The amendment, adding these three words and omitting the clause that follows, is taken from Com. Book, 14 Nov.

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Court, but contumaciously absent themselves, it shall and may be lawful upon like certificate to the two Justices of the County, or two Justices of any city, borough or town corporate, where there are Justices, where such party or witness doth inhabit, to issue out his warrant for the attachment of such party or witnesses and for his commitment to prison, there to remain until sufficient surety be given to the King, to make his appearance in Court to which he was cited.

Provided always and be it enacted, that this Act, nor anything herein contained, shall extend to any tithes, offerings, oblations, obventions within the city of London or Liberties thereof, nor to any other city or town corporate where the same are settled by an Act of Parliament in that case particularly made and provided.

Provided also, and be it enacted, that no complaint for or concerning any small tithes, offerings, oblations, obventions or Church Rates, Clerks' or Sextons' dues or wages, shall be heard or determined by the Ordinary by virtue of this Act, unless the complaint shall be made within the space of one year after the time that the same did become due and payable, anything in this Act contained to the contrary notwithstanding.

Provided also, that this Act nor anything therein contained shall extend to any Peer of this realm, so as to subject any such Peer to any proceedings of any Justices of the Peace for or touching the matters aforesaid.

Provided also, that if the party sued for any of the causes in this Act specified, shall during the suit or after sentence go into any other county than that wherein the cause is commenced or depending, That the Ordinary before whom such cause shall be brought, shall at the instance of the party who has obtained any order, judgment or decree, under his seal of office, make information and request touching the premises to any two Justices of the Peace of the county where such person shall be and reside, who are hereby empowered to attach such person and to commit to prison without bail or mainprise, till the said person shall give in security to stand by and make good the orders and decrees of the Ordinary in such cause, or to cause the goods of such party to be distrained as is above enacted. Provided, nevertheless, that if the Ordinary for the time being shall be in the Commission of the Peace in that county, where the complaint lies for any of the causes in this Act specified, he shall be and is by this present statute impowered to act after the same manner and to the same effects and purposes in law, as the Justices of the Peace, upon information or request to them made by the Ordinary, might have done or may do by virtue of this Statute. [Read 1^a. this day; 2^a and committed on the 31st. L. J., XIV., 329, 330. The Committee, of whom the Bishop of London was Chairman, met on Nov. 9, 12 and 14,* the amendments being made on the last-named day. The Bill was reported on the 15th, when the amendments were read twice (L. J., XIV., 343), but, as stated in the endorsement on the Bill, "nothing done upon them." No further proceedings.†]

(a.) 14 Nov. 1689. Paper endorsed, The Quakers' Exceptions against the Bill, viz.:—(1.) In the Bill no appeal to any other

* The House on 2 Nov. ordered the Committee to sit on the 7th, when the Committee was revived, and ordered to sit on the 9th (MS. Min. of dates. No entries in L. J.).

† A Bill for the more easy recovery of small Tithes and for the repair of Churches had been brought from the Commons on the 14th, and was then before the House. (L. J., XIV., 341).

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or higher Court is granted, nor provision made for redress or restitution to persons wrongfully prosecuted, nor for the punishment of them that may maliciously or wrongfully prosecute others, but the ecclesiastical judge is made the sole judge and determiner by his definitive sentence concerning the penalties upon the persons and personal estates. (2.) No trial by jury allowed, although the penalty be twofold, imprisonment of the persons and distress of goods, which appears very hard measure. (3.) No discharge of the prisoner provided when distress is made, which are two punishments for one offence (supposed), that is, loss of liberty, and loss of goods, tending to starve his poor wife and children at home. (4.) No legal excuse admitted or provided for the party cited, summoned, or prosecuted, suppose he be gone a long journey or otherwise unavoidably prevented by sickness, or other emergent occasions from appearing, but he must be taken *pro confesso*, which is to condemn him without hearing. (5.) The penalty the same for not paying the Clerks or Sexton or Church Rates as is for not paying Small Tithes. *Quære*; How can this be equal or bear proportion? Will not this increase our trouble and sufferings by thus giving power to so many, and such prosecutors as Clerks and Sextons on such small accounts as theirs? (6.) Any party or witnesses cited to appear in the Ecclesiastical Court are liable to imprisonment upon certificate from the said Court, which is very hard, especially to our friends who cannot for conscience sake swear in any case. *Quære*; Whether this Bill doth not exceed the Statute 32 Hen. 8, ch. 7, in severity, and give a greater and more absolute power to the Ecclesiastical Courts over men's persons and properties than they ever had, excepting the power of the Star Chamber and the Ecclesiastical Commissioners, or High Commission Court, taken away, repealed, and made void, in 16 Car. 1., ch. 10 and 11. (1.) An appeal seems to be admitted in 32 Hen. 8, ch. 7, s. 3. Here is none in this Bill. (2.) Imprisonment till sureties to perform the definitive sentence and judgment of the Court Ecclesiastical, but no distress of goods in the interim by the said Statute 32 Hen. 8, ch. 7, s. 4, which yet is very hard and severe of itself. It is also with submission conceived that other reasons against this Bill may be duly alleged, and such as heretofore did legally and justly induce the parliaments, &c. (1.) To the repeal of the statute made in the 11th Hen. 7, ch. 3, which was repealed in the 1st year of Hen. 8, ch. 6, *vide* Chief Justice Coke's Institutes, 4th pt., fos. 40, 41, and in the 2nd pt., fo. 51, where Richard Empson and Edmond Dudley's oppressive and arbitrary proceedings are thereupon discovered. (2.) To take away the Court commonly called the Star Chamber, 16 Car. 1, ch. 10. (3.) And to take away the power of the Ecclesiastical Commissioners, or their High Commission Court, and the prohibiting their oppressive proceedings upon the repeal of a branch of a Statute primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical 16 Car. 1, ch. 11, and it is conceived, with humility, that the same reasons for the repealing of those laws and Courts aforesaid stand good against the present Bill, they being injurious and contrary to the great Charter and common course of justice, and this Bill giving also such absolute power as it doth to the Ecclesiastical Courts and their judges to determine and give definitive judgment upon subjects' personal estates, or goods and chattels,

and for confinements of persons, so to oppress, burthen, and ruin them. Lastly, the liberty of conscience already confirmed by a law may greatly be infringed and lessened, if the Ecclesiastical Judges or Courts have such absolute power and jurisdiction given them over men's persons and estates, to imprison, confine, and consequently to ruin them, according to the import of the present Bill aforesaid, which it is really believed must greatly dissatisfy many thousands of the King's conscientious Protestant subjects, and increase the number of prisoners, which are many on that account already. [Read in Committee this day, when the Quakers, who had attended first on the 9th, but then requested further time to consider the Bill, were heard to make their exceptions. Their first is that they ought not to contribute to the repair of Churches. Secondly, the penalty is the same for not paying the Clerk's and Sexton's wages as for not paying tithes, which is not equal. Thirdly, both to imprison and to distrain for non-payment of tithes is two punishments for one crime. Fourthly, it is a matter of conscience to us not to pay tithes. If the tithes might be taken from us, we desire it may be with as much moderation as may be, it being more easy that our goods should be distrained than our persons imprisoned. It is a grievance that our friends should be summoned 20 or 40 miles for a small tithe. Com. Book, Nov. 9, 14.]

- (b.) 14 Nov. Draft of amendment adding the words ("*then the ecclesiastical can be found*"). Agreed to, and ordered to be reported this day. Com. Book. [The amendment is inserted in full in the text above.]

153. Nov. 2. Writ of Summons. (Bp. Chester.)—Writ of summons, dated 29 Oct., to Nicholas [Stafford], Bishop of Chester, who took his seat this day. L. J., XIV., 330.

154. Nov. 2. Committee of Inspections. (L. Russell, &c.; *Quo Warrantos*; Dispensing Power.)—Names of the Jurors impannelled and returned for the trial of the late Lord Russell, together with their several trades, viz :—

Coleman Street Ward.

Sir James Ward.....	Knt.
Sir Thomas Davall	Knt.
Arthur Baron	Merchant.
Thos. Moffitt	Grocer.
*John Martin.....	Exchangeman.
Thos. Hodges.....	Silk-throwster.
Will. Fitzacherly.....	Merchant.
*Will. Rouse	Apothecary.
Peter Joy	Merchant.
Dept. John Pelling	Apothecary.
Thos. Porey	Merchant.
Will. Winbury.	
Thos. Normansell	Writing Master.
Rich. Meynell.	
Will. Pellat.	
*Jervas Seaton.	
Rich. Burden.	

* The twelve names indicated by asterisks are marked "sworn" in the duplicate list next following, and formed the jury at the trial on 13 July 1683. Comp. Howell's *State Trials*, IX., 594.

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Jacob Lucy Merchant.
 Peter Joanes Merchant.
 Will. Crouch Packer or Merchant.

Billingsgate Ward.

Dept. Henry Loades Orange Merchant.
 Hugh Strode.
 Robert Mellish Merchant.
 Abraham Wright *Non invent.*

Broad Street Ward.

Dept. Peter Aylworth Dept.
 Will. Danes Scrivener.
 John Steventon Merchant.
 Will. Rutland Exchangeman.
 *William Fashions Scrivener.
 *Thomas Short Druggist.
 Samuel Skinner Exchangeman.
 Theophilus Mann Exchangeman.
 George Baker Picture-seller.
 Richard Kent, Esq.
 Gerlington (*sic*) Chaplin Exchangeman.

Dowgate Ward.

Richard Hamond Brewer.
 Dept. Francis Chamberlaine... Salter.
 John Jenew Sugar-baker.
 John Ridges.

Bishopsgate Ward Within.

Dept. John Russon Distiller.
 Joel Andrews Packer.
 Ralph Izard Grocer.

Bridge Ward.

John Short, Senr. Woollendraper.
 Thomas Nicholls Linendraper.
 Roger Mingay Woollendraper.

Candlewick Ward.

*George Toriano Merchant.
 *Will. Butler Merchant.
 Dept. Will. Parker Woollendraper.
 *James Pickering Merchant.

Lime Street Ward.

John Hall Linendraper.
 Matthew Gibbon Linendraper.
 Thos. Ainger Apothecary.
 Rob. Masters Merchant.
 Luke Pead Woollendraper.
 Christopher Johnson Innkeeper.
 Philip Perry Cheesemonger.
 Stephen Gittings Packer.
 William Warre Merchant.

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Wallbrook Ward.

John Westbrooke.
 John Tempest Perfumer.
 Edward West Scrivener.
 Edward Le Neve Gent.

Langbourne Ward.

Will. Gerrard Merchant.
 Anthony Mingay Factor.
 Nath. Horneby Goldsmith.
 Henry Collyer.
 James Smith Merchant.
 Thos. Lefeild Mercer.
 Thos. Jenny Mercer.
 Sam. Hankee Goldsmith.

Cripplegate Ward.

Rob. Ask. Esq. Merchant.
 *Thomas Jeve Haberdasher.
 *Hugh Woden Tobacconist.
 *Robert Brough Linendraper.
 John Mallary Druggist.
 Thos. Yate Tobacconist.
 William Crispe Haberdasher.
 John Walkley Tobacconist.
 *Thomas Oneby Merchant.

Farringdon Within.

Francis Griffith Scrivener.
 Peter Pickering Mercer.
 Edward Rigby Mercer.
 Richard Hoare Goldsmith.
 Thos. Barnes Coatseller.
 Henry Robbins Laceman.
 Henry Kemp Laceman.
 John Owen Druggist.
 Will. Symonds Vintner.
 Thos. Gryce Ironmonger.

Farringdon Without.

Paul Weekes, Esq. Scrivener.
 Roger Reeve Salter.
 Edward Reddish Haberdasher and Hatter.
 Edward Kemp Sadler.
 Will. Brown Grocer.
 Ambrose Istead Stationer.
 Thomas Fowles Goldsmith.
 Thomas Hamond Vintner.
 Thomas Fitzer Sadler.
 Thomas Dring Bookseller.
 Henry Baldwyn Corn Chandler.
 Rob. Fowles Goldsmith.
 Thos. Rawlinson now Knt.
 Will. Warne Scrivener.
 Valentine Castilion Grocer.
 Jervas Wilcox Salesman.
 James Smith Wire drawer.

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Aldersgate Within.

Peter Floyer..... Refiner.

Aldersgate Without.

Rob. Scott Bookseller.
John Andrews..... Brasier.
Jeremiah Wright Painter.
Jacob Sheldrake Wire drawer.

Cordwainer Ward.

Thos. Colson Merchant.

Vintry Ward.

George Peak..... Dryer.
John Hoyle Scrivener.

Castle Baynard Ward.

Sir William Dodson, Knt.
Sir Edmund Wiseman Knt.
Will. Gostlin, Dept., now Knt.
Nicholas Alexander Laceman.
Nicholas Charlton..... Woollendrapier.
Christopher Pitt..... Woollendrapier.
Rob. Beddingfeild..... Woollendrapier.
Thos. Warren..... Bricklayer.

Signed PHILIP PERRY. *Endorsed*: Copy of the Lord Russell's Jury.

[Delivered in to the Committee of Inspections by Mr. Perry, Clerk to Secondary Trotman, on 25 Nov., and again on 4 Dec., after having been examined by Trotman, who was examined by the Committee on the 29th as to the panel and the Precept for impannelling L. Russell's jury, which he stated was in the custody of Mr. Tanner, the Town Clerk.* (Com. Book of dates.) The Committee, before whom this and the papers annexed below were produced, was appointed this day (2 Nov.)†

Their meetings were on Nov. 6, 11, 15, 16, 20, 22, 25, 27, 29, and Dec. 4, 6, 11, and 13, E. Stamford being chairman. The record of proceedings in the Com. Book of those dates consists almost entirely of notes, taken by the Clerk,‡ of the informations given by the various witnesses, which (with a few exceptions hereafter noted) were reported to the House on Dec. 20, and appear *in extenso* in L. J., XIV., 377-94. The notes, however, add to what is reported the following items of evidence not found in the printed journal, with the exception of the words in square brackets, which are inserted for explanatory purposes,—Nov. 15.

* Mr. Tanner on Dec. 4 produced the original panel for the juries at the Sessions when L. Russell was tried. (Com. Book, 4 Dec.)

† L. J., XIV., 331. The motion, as roughly entered, was "to appoint a Committee to inspect the deaths of the Lord Russell, Col. Sidney, Sir Thos. Armstrong, and Mr. Cornish and others, and who were the promoters of bringing the *Quo Warrantos*, thereby to make corrupt juries, against the City Charters, and who were the Regulators, and who were the public asserters of the Dispensing Power." The only names entered in MS. Min. as of the Committee are D. Bolton, E. Oxon, E. Huntingdon, L. Delawar, L. North, L. Chandos, and L. Lovelace. (MS. Min., 2 Nov.)

‡ On 15 Nov. the Chairman (E. Stamford), proposed that Mr. Blandy might come in and assist his Lordship in taking notes of the evidence to be given, but this was not agreed to. (Com. Book.)

*Dr. Tillotson** [is asked whether he wrote a letter to the Lord Russell June 20. 1683] in fol. 80 in the History of Passive Obedience . . . [He wrote the letter 'merely of himself, and not at anyone's desire] but upon his own discourse with the Lord Russell before . . . [My Lord Halifax showed a very compassionate concern for my Lord Russell and all the readiness to serve him that could be wished.] The storm against us was upon the coming out of Lord Russell's Paper. . . I never heard Lady Russell say anything against Lord Halifax.—Nov. 18. *John Hampden's* evidence concludes with the following words, afterwards cancelled; He saith that if he is not mistaken, there was a letter written to Lord Mountague at Paris that would give light in the matter of the Duke of Monmouth's Paper:—Nov. 20. *Mr. Samuel Johnson*: [He does not remember the four gentlemen at present that could witness against Josiah Keeling, but he will endeavour to find them out.] He saith he believes Lady Russell's servant knows the above mentioned four persons.—Nov. 22, *Sir Peter Rich*: † [He went with the Lord Russell to the scaffold ex officio, as he was Sheriff, and the other Sheriff was there also. They were both commanded to do so.] He believes the order is in Capt. Richardson's hand . . . He is asked whether he believes he was legal Sheriff. He saith he expected no such question. He desires that a day may be assigned him, if he must answer, for he has not his papers here. Some debate arising hereupon, he is ordered to withdraw . . . *Anthony Row's* evidence concludes thus; Being asked, he saith he knows not that L. Radnor was with the Duke of Monmouth and L. Halifax when the Paper was signed. *Sir Benjamin Thorowgood*: [He was turned out] with five others, and Mr. Mawson [Mosson in L. J., XIV., 383] was put in his place.—Nov. 25. *Sir Dudley North*: [He never understood that a jury was to be returned of men that lived all together.] A question arising whether the vicinage is distinct from the City of London, he withdraws, and the Common Serjeant is called in. [Here follows the evidence of Henry Crisp] . . . *Sir Dudley North* recalled. [He was not prevailed with nor persuaded by any others to take upon him the Office.] He desires it may be noted that this was a substantial jury. He knows not who is most substantial in the City. *Henry Crisp*: [He doth not know of how many Wards the Lord Russell's jury were returned.] The Sheriff, he saith, returns out of what wards he thinks convenient. This he speaks in point of law, not on his oath . . . [He remembers the Lord Russell desired he might be heard by Counsel, and that they might have time to consider of it. But the Court would hear them immediately.] He remembers that at the trial of some Jesuits at one Sessions, Mr. Oates swore directly against one of them; but Mr. Dangerfield not doing so, the Jury were discharged, and he was arraigned next Sessions again, and then the Witnesses swearing up to it, he was found guilty. *Josiah Keeling*: Saith he told Lord Lincoln he would be torn in pieces before he would discover anything against any nobleman, and said my Lord Halifax got him his place in the Victualling House. He saith that his Lordship went to Keeling in the name of a great man . . . Saith that Lord Lincoln sent for him this day, and spoke to him of £3,000 or £4,000

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* Dr. Tillotson was sworn at the Bar this day. (MS. Min., 15 Nov.)

† On 19 Nov. E. Stamford reported from the Committee that they desired a message might be sent to the Commons for leave for Sir Peter Rich to attend the Committee and give evidence. Agreed to; and Sir Miles Cooke and Sir William Lacon Childe to take the message. (MS. Min. No entry in L. J.) Leave was given *ead. die* by the Commons. (C. J., X., 290.)

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and of going into France.* He was never in his life encouraged nor persuaded by anyone to swear against the Lord Russell, Walcot, nor anyone. [He has been at the Gunn Tavern, etc.] He saith he told the Earl of Lincoln that he had an employment, and that King Charles II. gave him the place. [Saith he first applied himself to Lord Halifax, at his Lordship's house, etc. He doth not know the Gentleman who gave him the Note upon Mr. Duncomb, the Banker, for £500], but he lives on the left hand going into Westminster Hall. He had not his pardon till after Walcot's and Hone's trials. He saith he once petitioned the King for the Gauger's place in London, but had it not.—29 Nov. *Mr. Thomas Morris*: He believes he acquainted Sir William Pulteney with what he heard Keeling say before the Lord Russell's trial. He withdraws. *Mr. Peter Hagar*: [Examinant saith that Keeling told them he would go, because he had promised them in the morning to meet them again that night.] Examinant knows not that Keeling said he was to meet the Lords in the Tower. [He heard Keeling say that he might ride in a coach and six horses to Windsor. He believes he told this to twenty people, before the Lord Russell's trial.] After this Plot broke out, Examinant told it to my [? Lord] Beekenham, who was acquainted with Lord Russell's gentleman, Mr. Spencer.—4 Dec. *William Hornby*: He believes one Shank, a Schoolmaster, about Barnaby Street, in Southwark, can say something of Keeling. *William Bridgeman*: He remembers not whether Goodenough or Rumsey were on

* The evidence relating to E. Lincoln is struck through. Keeling's information is signed by the Examinant himself, a marginal note stating that this was done on 29 Nov. On the 26th, the day after this information was given, the House being acquainted that a noble lord at the Committee sent for a person to the Committee and told him that he would give him something if he would not discover anything concerning it, ordered E. Lincoln and Keeling to attend. (MS. Min., 26 Nov. L. J., XIV., 354.) On the 27th the proceedings in the House are thus recorded:—House moved that E. Lincoln do give an account of what he said at the Committee. The Standing Order of the House read. E. Lincoln says he was interrupted at the Committee. A witness being summoned to attend the Committee, a peer sends for him and examines him at his house. E. Lincoln said he had sent to him he desired him he would not speak of a friend of his, and promised him £3,000, and E. Lincoln said at the Committee "My Lords, is not this a rogue? he swore to me he would "not tell and now he doth." Exception being taken at somewhat the Lord Ossulston said—"Wheeling (*sic*) questions and stopping out of the way"—L. Ossulston explains himself that he meant no reflection on the Committee. E. Lincoln declared if he had done anything to the L. North [?], he was ready to ask his pardon. After Debate, E. Lincoln asked pardon as in L. J., XIV., 354. (MS. Min., 27 Nov.) In Committee on 29 Nov. after the informations against Keeling, concluding with that of Joshua Moore, had been taken, a question was proposed, but is struck through, vizt. Whether a Justice of the Peace shall be sent for and desired to demand sureties of Josiah Keeling for the good behaviour? A further question was then proposed, and carried by 18 votes to 8, vizt. Whether this Committee shall send for a Justice of Peace and let him know that they have had several testimonies upon oath in order to do what he thinks necessary towards the swearing him till the House of Lords sits on Monday next? The Committee then examined Keeling further, as reported in L. J., XIV., 357, and commanded him to attend the House on the following Monday. On Dec. 2, E. Stamford acquainted the House that the Committee had appointed Keeling to attend the House this day, and were of opinion that he should be secured. After the deposition of King had been taken, Rumbold was called in. Asked, did Josiah Keeling swear anything against you? Answer: He knows not. He gave an information against him. Then Keeling was called in. Asked if he gave any information against William Rumbold on oath? Yes. To what effect? The papers of the division of the City were given to Goodenough. Judges asked whether William Rumbold is a good evidence against Keeling on oath? *L. C. Justice*: This is nothing to set aside his evidence. Rumbold's deposition was then taken, etc. as in L. J., XIV., 358. (MS. Min., 2 Dec.)

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oath when they confronted the Earl of Stamford.—6 Dec. *Sir John Moore*.* [Examinant refers to the Records how the Sheriffs were chosen.] He thinks Sir Robert Clayton drank to five or six He was turned out in the Regulation in the time of King James. Several of them were turned out together, that would not comply about Papists coming into government. L. Jeffreys examined me, and I told him I would serve the King as far as lawfully I might. *Aaron Smith*: He was locked up in a garret in the King's Bench several months together, Mr. Phillips had an order from one of the Secretaries to come to him. *William Rouse*, Apothecary, one of the Lord Russell's Jury, Says no person made application to him before Lord Russell's trial. He has between £300 and £400 per annum in houses and land. *Capt. William Richardson*: Says he was very kind to Cragg, and that he endeavoured to get him out. He withdraws.—Dec. 11. *Mr. Joseph Ducasse* (sworn at the Bar) being called in and asked what he knows concerning Sidney's death, desires time (since he speaks bad English) that the Information he is now to make, having been written down by him may be read, which he delivering in, was accordingly done, and he directed to sign it, which he did. (Mem. by Clerk. That on the 14 December 1689, the E. Stamford had the above-mentioned Information of me in order to be reported†). He delivers in Papers which he says Col. Sidney gave him, which are delivered to the Clerk to be read on Friday at the next meeting. *Lord Sidney* says the Papers delivered in by Mr. Ducasse were his brother's writings. *Sir Ambrose Phillipps*: Says he never saw Col. Sidney but once, and he never had reason to call him rogue, nor did he ever call him so. [The preceding sentence is struck through.] He is confident Mr. North gave him the Order to go to Mr. Smith, or else told him there was such an Order with the Lieutenant of the Tower. [He says nobody but Mr. Roger North either persuaded or advised him to go to Mr. Smith.] *Mr. James Pickering*: Says he is a Protestant.—Dec. 13. *Mr. Thomas Oneby*: Says he wrote shorthand with a silver pen, so could not take it at large.

In addition to the above witnesses, the Committee examined the Clerks of the Signet and Privy Seal (*see* notes to Annexes (o) and (p) below), Mr. Nott and Mr. Bland (*see* notes to Annex (q) below), and the three following, viz:—

Nov. 20. *Captain Henry Wilkinson* (sworn at the Bar) is called in, and the Order to the Committee being read to him, he is asked what he can say to any of the heads mentioned in the Order. He says he is not able to give any account of any of these things. He knows nothing of any public business but what relates to the Lord Shaftesbury. Says he was never spoken to to be a witness against any but the Lord Shaftesbury. Ordered that the House be moved for leave to examine Capt. Wilkinson about a villainous matter.—Dec. 6. *Robert Cragg* (sworn at the Bar), being called in and asked what he knows concerning the three heads mentioned in the Order, says he knows nothing of any of them. He says he was examined before the King at Whitehall, three or four Lords being present, the L. Chancellor Jeffreys, E. Sunderland, E. Rochester, and L. Godolphin, as to what he knew concerning L. Devon's, L. Delamere's and E. Macclesfield's knowledge of D. Monmouth's rebellion. *Richard Wynn* (sworn at the Bar) being called in and asked whether he has not a Copy of the Plea Col. Sidney offered at his trial, says he has the original Plea under

* He was sworn at the Bar this day. (MS. Min., 6 Dec.)

† See L. J., XIV., 390-1, *In extenso*, and as to DuCasse's "Papers" *ib.* 404.

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Serjeant Rotheram's hand but not here. He is ordered to attend at the next meeting.†

In reporting on Dec. 20, the Chairman (E. Stamford) stated to the House that the Committee had thought that the best way of making a report was to "put it into several Informations." The Informations being read, he gave the House an account of the several pardons, etc., out of the Signet Books. On consideration of the report, House moved to go upon the heads as to the murder of L. Russell. Moved that the debate be adjourned to a day certain. Ordered to adjourn to Monday. (MS. Min., 20 Dec., L. J., XIV., 394).—On 30 Dec. the House ordered the Report to be further considered on 1 Jan. (MS. Min. No entry in L. J.)—On Jan. 2 the debate being resumed, the House read the depositions of Normansell, Trotman, Sir Peter Rich, Tanner, and Sir Dudley North, concerning L. Russell's death, and after debate appointed the Committee to inspect the Journals. (L. J., XIV., 402.) This Committee, after meeting on Jan. 3 (Com. Book), reported by E. Mulgrave, their Chairman, on the 4th (L. J., XIV., 403), and the House ordered the Examinations to be delivered to the Clerk of the House of Commons. (*ib.* 404).]

(a.) Duplicate of preceding. *Signed* Philip Perry. [See notes to preceding.]

(b.) Names of the Jurors impanelled and returned for the trial of Henry Cornish, late of London, Esq., together with the places of their abodes, and their several trades, viz. :—

Sir Will. Russell, Knt. . . . Mercer, Gracechurch St.

Sir Michael Hicks, Knt. . . St. Peter's Hill, near Old Fish St.

Sir John Mathews, Knt. . . Merchant, Winchester St.

Sir Will. Dodson, Knt. . . . Woollendrapery, St. Paul's Churchyard.

Sir Thos. Griffith, Knt. . . Merchant, Bishopsgate St.

Sir Edmund Wiseman, Knt. Mercer, Paternoster Row.

Sir John Clarke, Knt. . . . Apothecary, St. Paul's Churchyard.

Sir Thos. Vernon, Knt. . . Merchant, Coleman St.

Sir Edward Boveree, Knt. Merchant, Mincing Lane.

Richard Alie, Esq. Merchant, Mincing Lane.

Ralph Box, Esq. Druggist, Cheapside.

Thos. Hartopp, Esq. . . . Merchant, Lime St.

Thos. Fowle Goldsmith, Fleet St.

Arthur Baron, Esq. . . . Merchant, Coleman St.

Benjamin Scott. Merchant, St. Helens.

*Thomas Rawlinson Merchant, Old Bailey.

John Short, Senr. Woollendrapery, Gracechurch St.

Thos. Goddard Merchant, Coleman St.

William Gore Merchant, Coleman St.

John Kent Merchant, Basinghall St.

Edward Griffith, Esq. . . Merchant, Bucklersbury.

William Wythers, Senr. . . Linendrapery, Cheapside.

John Midgeley Scrivener, Bread Street Hill.

John Carpenter Brewer, Without Aldgate.

Francis Chamberlaine. . . Salter, near Thames St.

Peter Joy Merchant, St. Dunstan's Hill.

*Thomas Langham Apothecary, Bishopsgate St.

George Toriano. Merchant, St. Nicholas Lane.

† Wynn's evidence on 11 Dec. is in L. J., XIV., 391.

* The names with an asterisk are marked "Sworn."

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Henry Loades	Orange Merchant, Billingsgate.
Robert Bedingfeild	Woollendraper, Ludgate St.
*Ambrose Istead	Scrivener, Fleet St.
William Butler	Merchant, St. Nicholas Lane.
Kenelm Smith	Merchant, Fenchurch St.
Ralph Lee	Merchant, Threadneedle St.
William Moyer	Merchant, Houndsditch.
Robert Scott	Bookseller, Little Britain.
William Warne	Scrivener, Old Bailey.
Thos. Short	Druggist, Threadneedle St.
Jerningham Chaplin	Exchangeman, Broad St.
John Jenew	Sugar-baker, Thames St.
James Pickering	Merchant, St. Nicholas Lane.
James Smith	Grocer, Fenchurch St.
Thomas Lofeild	Mercer, Lombard St.
James Wood	Merchant, Lime St.
*Thomas Pendleton	Woollendraper, St. Paul's Church- yard.
Samuel Hinton	Woollendraper, St. Paul's Church- yard.
Nicholas Smith	Dept., London Bridge.
James Smith	Merchant, Old Jury.
Thomas Peircehouse	Merchant, Tower St.
*John Grice	Ironmonger, Newgate St.
*Thomas Oneby	Merchant, Aldermanbury.
Richard Cotton	Grocer, Friday St.
Richard Hoare	Goldsmith, Cheapside.
Roger Reeves	Salter, Snowhill.
William Crouch	Merchant, Bury St.
John Forster	Ironmonger, Gracechurch St.
Thos. Serjeant	Linendraper, Cheapside.
Jas. Richardson	Mercer, Mile St.
*William Cloudesly	Vintner, Old Fish St.
*Richard Holford	Cheesemonger, Bread St.
Thos. Crane	Brewer, Houndsditch.
Lewis Wilson	Vintner, Cornhill.
Henry Wood	Hosier, Cornhill.
William Tigh	Linendraper, Leadenhall St.
John Pelling	Apothecary, Mark Lane.
Jervas Wilcocks	Salesman, Snow Hill.
Jacob Sheldracke	Gold-wire drawer, Aldersgate St.
Dept. George Peak	Dyer, Thames St.
Francis Brerewood	Linendraper, Cornhill.
*William Longmore	Upholsterer, Cornhill.
John Price	Fringe-maker, Cornhill.
William Fitzacherly	Merchant, Coleman St.
William Fashion	Scrivener, Threadneedle St.
Walter Acton	Mercer, King St.
*Stephen Coleman	Confectioner, Leadenhall St.
*Robert Clavell	Bookseller, St. Paul's Churchyard.
*William Long	Linendraper, Fleet St.
John Wells	
Morrice Mosely	Hosier, Cannon St.
John Pott	Oilman, Gracechurch St.
Thomas Lardner	Apothecary, Gracechurch St.

* The names with an asterisk are marked "Sworn."

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James Kelke Pewterer, Cornhill.
John Perrot Apothecary, Leadenhall St.
Thos. Ashby Threadman, Aldermanbury.
Samuel Skinner Exchangeman.
William Rouse Apothecary, Old Jewry.
Noel Basano Linendraper, Aldgate.
Paul Sherman Druggist, Buckersbury.
John Walkly Tobacconist, Aldermanbury.
William Humfreys Oilman, Poultry.

Signed PHILIP PERRY. [*See notes to first paper above.*]

(c.) Duplicate of preceding, but without designations or addresses.
Signed PHILIP PERRY. [*See notes to first paper above.*]

(d.) 5 May 1685. Order, of date, of the Lord Mayor (Smith) and Court of Aldermen. Whereas by the judgment upon the *Quo Warranto* for seizure of the City's franchises, and also by the surrender afterwards made of the several Companies' charters of the City, the livery which any of the said Companies had, or the privilege of being a Livery Company of the City is taken to be suspended and determined, and whereas his Majesty has now signified his pleasure to the Court that the Companies hereafter named should have liveries *de novo* granted them from the Court and that such members as should be constituted of the livery should elect Citizens to serve for the City at the approaching Parliament according to the former usage and constitution of the City in that behalf. It is Ordered by the Court that the Twelve Companies of the City, and also the companies of Brewers, Leathersellers, Barber-Surgeons, Cutlers, Armourers, Sadlers, Cordwainers, Apothecaries, Plumbers, Innholders, Founders, Cooks, Coopers, Tylers and Bricklayers, Blacksmiths, Joiners, Scriveners, Stationers, and Glaziers, shall have a Livery and be esteemed Livery Companies of the City; and that such of the best and most sufficient members of all the said Companies, being persons of approved and unquestionable loyalty as the Master, Wardens, and Assistants of each Company shall nominate, and this Court shall allow of and approve, shall be of the Livery of the said Companies and perform the office and duty of the said place in like manner as has been accustomed. Provided that the number of Liverymen to be appointed in the said several Companies of Brewers, Leathersellers, etc. [as above] shall in none of the said Companies exceed the number appointed by his Majesty's Letters Patents lately granted to the said respective Companies for the Master, Wardens, and Assistants thereof respectively to consist of and as many more. *Signed* Wagstaffe. [As to this, and the nine following papers, the Com. Book records as follows: --Nov. 29. Mr. Wagstaffe ordered to attend at the next meeting and bring with him the Orders of Council delivered to him, relating to the regulation of the City and the Lord Mayor and Aldermen's orders in pursuance of those Orders of Council. Dec. 4. *Wm. Wagstaffe* (sworn at the Bar) delivers in the Orders of Council and the King's letters, but has them returned to make copies of them for the Committee. He delivers in four copies of Orders of the Court of Aldermen.]

(e.) 7 May 1685. Order of the said Court allowing and approving certain lists of the names of livery-men nominated by the Masters, Wardens, and Assistants of the Companies of the Drapers, etc. [naming all as in preceding paper, except the Leathersellers,

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Armourers, Cordwainers and Joiners], and presented by them this day to the Court, viz.—of the Drapers, Sir James Smith, Knt., Lord Mayor; of the Mercers, Alderman Thorowgood, etc. all the said persons being freemen of the City and first sworn, as directed by his Majesty's Letters Patents for the due execution of the said place; And it is Ordered by the Court that the Masters and Wardens of all the said Companies do bring to the Court on this day Sennight the names of such of the liverymen as shall omit to take their oaths accordingly. *Signed* Wagstaffe. [See note to preceding.]

(f.) 25 Sept. 1687. Copy Order in Council, of date, for removing Members of Companies of London. Recites that by the late Charters it is provided that his Majesty may by Order in Council from time to time displace or remove the Masters, Wardens, and Assistants of the several Companies, or any of them and thereupon the places of such persons so removed shall be void. His Majesty having thought fit that several members of the said several Companies shall be removed, the Order proceeds to enumerate those who are to be removed. The list of names comprises 19 Masters, 2 Bailiffs (of the Weavers), 83 Wardens, and 760 Assistants, or a total of 864, distributed among 48 Companies. * [See note to Annex (d).]

(g.) 7 Oct. 1687. Copy of the King's letter to the Lord Mayor and Aldermen, for restoring the ancient Assistants of Companies of London; as follows:—"J.R. Trusty and well-beloved; We greet you well. Whereas we have thought it necessary for our service to cause several of the Masters, Wardens, and Assistants of several of the Companies within our City of London by our Order in Council to be removed, which we have already signified to you, and inasmuch as we are given to understand that divers of our Subjects upon the surrenders of the several charters of the Companies of our said City to us or to our late dearest Brother were displaced and removed from being Assistants in the respective Companies, and have ever since been deprived and debarred from their stations and precedencies in their respective companies; Now inasmuch as we are resolved to encourage and countenance all our subjects of dutiful behaviour towards us and our government, so long as they continue to act accordingly; Our will and pleasure therefore is that you cause so many of the said several persons, who at the respective times of the surrenders of the said Charters were of the Assistants of the said respective Companies as will complete and fill up the numbers reserved and appointed by the said several Charters to be again restored and forthwith admitted according to their seniorities in their respective Companies; Except only such, whom we by our said Order in Council have removed; And we do require that they shall be forthwith readmitted and restored to the enjoyment of their former privileges and precedencies of being of the Assistants of the said respective Companies as fully and effectually as they were at the time of the said late surrenders, and that you cause and require the said several Companies forthwith to proceed to make choice of Master Wardens and other officers now vacant; Anything to

* The following Table gives a numerical summary of the contents of this List as well as those in Annexes (h) (k) (l) and (m).

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Company.	Removed.				Restored.	
	(f)	(h)	(k)	(l)	(m)	
Haberdashers -	40	53	11	12	4	4
Ironmongers -	22	24	2	9	9	9
Dyers -	16	35	7	26	—	20
Pewterers -	17	25	3	17	6	10
Upholders -	14	22	3	5	1	2
Painter-stainers -	16	13	2	18	2	4
Apothecaries -	25	53	13	22	8	9
Sadlers -	16	16	2	2	1	1
Salters -	16	38	5	14	—	1
Skinners -	24	39	1	15	2	4
Stationers -	17	53	7	55	1	3
Fishmongers -	25	81	4	14	2	3
Drapers -	19	60	9	40	12	13
Weavers -	20	51	—	4	11	12
Girdlers -	14	19	5	5	4	4
Brewers -	21	23	4	25	2	2
Bakers -	12	28	—	—	—	—
Founders -	9	14	4	4	3	3
Mercers -	30	59	9	24	3	7
Plumbers -	17	34	3	5	6	6
Barber-Surgeons -	17	43	3	7	4	4
Poulterers -	9	23	4	5	—	—
Leathersellers -	22	42	6	12	—	—
Turners -	14	31	—	—	1	1
Bowyers -	6	9	1	1	—	1
Glaziers -	14	19	2	15	1	1
Merchant-Tailors -	29	120	6	20	—	6
Tilers and Bricklayers -	14	19	2	2	2	—
Plasterers -	18	23	5	7	2	3
Fletchers -	1	4	—	—	—	—
Goldsmiths -	18	74	2	8	—	—
Cutlers -	11	20	7	15	—	—
Clothworkers -	25	79	6	10	1	1
Wax Chandlers -	14	18	4	6	—	2
Tallow Chandlers -	21	26	10	26	1	2
Coopers -	16	39	4	16	—	3
Innholders -	16	30	1	1	—	—
Joiners -	16	41	2	10	—	5
Scriveners -	13	20	1	1	4	7
Cooks -	15	21	2	3	2	3
Vintners -	32	74	5	64	3	13
Cordwainers -	11	28	5	9	—	4
Grocers -	52	105	4	33	2	2
Blacksmiths -	14	44	1	10	—	2
Masons -	12	19	1	1	—	—
Armourers -	13	25	3	5	—	6
Imbroiderers -	16	23	3	3	—	—
Carpenters -	15	17	—	6	—	2
Glovers -	—	13	8	9	—	4
Curriers -	—	6	1	2	—	—
Butchers -	—	—	10	15	15	24
Fruiterers -	—	—	5	11	—	—
Distillers -	—	—	7	7	—	—
Totals -	864	1,795	215	656	115	213]

the contrary thereof notwithstanding; And for so doing, this shall be your warrant. And so we bid you heartily farewell. Given at our Court at Windsor, the 7th day of October 1687 in the third year of our reign. By his Majesty's Command. SUNDERLAND P." A true copy, W. Wagstaffe. [See note to Annex (d).]

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(h.) 7 Oct. 1687. Copy of the King's letter to the Lord Mayor and Aldermen of London, for restoring to the Livery of the Companies of London except such as are therein mentioned, as follows:—"J. R. Trusty and well-beloved. We greet you well. Our will and pleasure is that you do cause the several persons whose names are mentioned in a certain Schedule hereunto annexed to be forthwith removed and discharged from being of the Livery or Livery-men of their respective Companies within our city of London. And whereas at the times of the late surrenders of several of the Charters, powers or privileges of diverse Companies within our said city in the reign of us or of our late dearest Brother, many members then of the Livery or Livery-men of their respective Companies were thereby displaced, and have ever since (as we understand) been deprived and debarred of their former privilege of being of the Livery of their respective Companies; And forasmuch as we are well persuaded of their loyalty and duty, and are fully resolved to encourage and countenance all our subjects of dutiful behaviour towards us and our Government, so long as they continue to act accordingly; Our will and pleasure therefore is, that you forthwith cause the said several persons, who at the respective times of the said late surrenders of their several Charters, were of the Livery of their respective Companies, and by the means aforesaid were thereof deprived, to be again restored (except only such as are in the annexed Schedule) to their said former privileges of being of the Livery of their said respective Companies as fully and effectually as they were at the time of the said late surrenders, anything to the contrary thereof notwithstanding. And for so doing this shall be your Warrant. And so we bid you farewell. Given at our Court at Windsor the 7th day of October 1687 in the third year of our reign. By his Majesty's command. SUNDERLAND, P." A true copy, Wm. Wagstaffe.—The Schedule referred to gives the names of 1,795 Livery-men distributed among 50 Companies. This total includes the 864 Masters, Wardens, and Assistants enumerated in Annex (f) above, with the exception of the following 31, viz.—

Haberdashers	{ John Athey, Assistant.
	{ William Richardson do.
Dyers.....	William Cleve, Esq., Warden.
	{ Samuel Hedge, Assistant.
	{ Thomas Evans do.
Painter-Stainers	{ Paul Audley do.
	{ Silvanus Morgan do.
	{ Wm. Stamper do.
Fishmongers	{ James Copping, Warden.
	{ Robert Hawkins, Assistant.
Weavers	George Reeve, Bailiff.

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	William Hart,	Assistant.
Brewers	Ralph Hawkins	do.
	John Bigsby	do.
	Robert Carter	do.
Merchant-Tailors	Edward Rigby	do.
Tilers and Bricklayers	John Broomer	do.
Goldsmiths	Nicholas Dawes	do.
Cloth-workers	Sir Joseph Williamson	do.
Tallow-Chandlers	Nicholas Charlton, Esq.	do.
Coopers	Arthur Bray	do.
	Daniel Templeman	do.
Inn-holders	John Morris	do.
Cooks	Rowland Baines	do.
	Thos. Brodrick	do.
	Abraham Jaggard	do.
	Chas. Mitchell	do.
Grocers	Thos. Cowden	do.
	Sam. Wastele	do.
	Hugh Stroud	do.
	Wm. Savage	do.

[See note to Annex (d).]

(i.) 11 Oct. 1687. Copy two Orders, of date, of the Lord Mayor (Peake) and Court of Aldermen, made on Orders of Council and King's Letters for displacing Assistants and Liverymen of Companies. The first Order recites the King's letter of the 7th (Annex (g) above), and in obedience thereto, orders that such of the Masters, Wardens, and Assistants as have not been removed by the King, belonging to all the Companies whose Charters have been surrendered, do forthwith readmit so many of those who were Assistants at the time of the surrender (except those removed by Order of Council), as will complete the number directed by the Charters; also that any vacancies caused by removals in the Offices of Master or Warden be filled up by the Company, and also that the Clerks of the various Companies bring an account to the Court in writing of their proceedings herein, with the names of their Masters and Wardens when chosen, and of their Court of Assistants when completed as aforesaid.—The second Order recites the terms of the King's Letters Patent, empowering the Court to appoint which of the Companies should have liveries and to approve, reject or dismiss any liveryman, and also the King's letter of the 7th October (Annex (h) above), and in pursuance thereof, removes certain persons from the livery and orders that all the liverymen existing at the time of surrender (except those hereby removed) be readmitted, and that the names of all liverymen so readmitted be presented to the Court in one column, and the names of all other liverymen now remaining and not hereby displaced, in another. Signed Wagstaffe. [See note to Annex (d).]

(k.) 10 Feb. 1687–8. Copy Order of Council, of date, at the Court at Whitehall, for removing members of Companies. Recites as in the Order of 25 Sept. 1687 (Annex (f) above). Sets out the names of 8 Masters, 17 Wardens, and 190 Assistants, or a total of 215 members, belonging to 48 Companies, who are to be removed, and directs the Lord Mayor and Court of Aldermen to

signify his Majesty's pleasure to the said Companies. *Signed* John Nicholas. A true copy, Wm. Wagstaffe. [See note to Annex (d).]

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- (l.) 11 Feb. 1687-8. Copy Letter from the King, of date, to the Lord Mayor and Aldermen for removing liverymen of Companies of London, as follows:—JAMES, R. Trusty and well-beloved, we greet you well. Our will and pleasure is that you do cause the several persons whose names are mentioned in a certain Schedule hereunto annexed, to be forthwith removed and discharged from being of the livery or liverymen of their respective Companies within our City of London. And so we bid you farewell. Given at our Court at Whitehall the 11th day of February 1687-8 in the fourth year of Our reign. By his Majesty's command. SUNDELLAND, P. A true copy, Wm. Wagstaffe. The Schedule gives the names of 656 Liverymen, distributed among 50 Companies, and including all of the 215 Masters, Wardens, and Assistants in preceding paper. [See notes to Annexes (d) and (f).]
- (m.) 11 Feb. 1687-8. Copy letter from the King to the Lord Mayor and Court of Aldermen, for restoring divers Assistants and Liverymen of the Companies of London, as follows:—JAMES, R. Trusty and well-beloved, we greet you well. Our will and pleasure is that you do cause the several persons whose names are mentioned in a Schedule hereunto annexed, to be restored to their former privileges of being of the Assistants and of the Livery or Liverymen of their respective Companies within our City of London. And for so doing this shall be your warrant. And so we bid you farewell. Given at our Court at Whitehall, the 11th day of February, 1687-8 in the fourth year of our reign. By his Majesty's Command, SUNDERLAND, P. A true Copy, Wm. Wagstaffe. The Schedule gives the names of 115 Assistants and 213 Liverymen (including all of the 115 Assistants), distributed among 29 and 40 Companies respectively. [See notes to Annexes (d) and (f).]
- (n.) 14 Feb. 1687-8. Copy Orders of date, of the Lord Mayor (Shorter) and Court of Aldermen, giving effect to the three preceding papers from the King, and ordering the Clerks of the Companies in question to bring to the Court a list, signed by the Master or one of the Wardens, of the Masters, Wardens, Assistants, and Liverymen of their respective Companies, both such as are now to be restored as those still continuing and not removed. *Signed* Wagstaffe. [See note to Annex (d).]
- (o.) 6 Dec. 1689. Petition of Rachell Lady Russell, relict of William Lord Russell, thanking the House for the Inquiry by the Committee of Inspections and urging it to pursue this just inquisition for blood. L. J., XIV., 363. *In extenso*.
- (p.) 11 Dec. 1689. Return (noted Signet Office) containing (i.) Abstract of the Charters granted by King Charles II. from the year 1680 to the fourth year of the late King James; (ii.) Abstract of the Dispensations with the Penal laws granted by the late King James; and (iii.) Abstract of all Pardons with *non obstantes* and Clauses of Dispensation granted the four last years of King Charles II. and in the reign of the late King James.

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(i.) Abstract of the Charters granted by King Charles II.
from the year 1680 to the fourth year of the late King
James :—

Date.	Place.	Name.	Date.	Place.	Name.
CHARLES II.					
1681, Feb.	Thetford -	Sir L. Jenkins.*	1684, Aug.	Dover -	E. Sunderland.
1682, April	Hereford -	"	" Sept.	Oxford -	"
" June	Tavistock (New)	"	" "	Totnes -	E. Sunderland.
" "	Chard (on for- feiture).	"	" Oct.	Wallingford -	E. Middleton.
" "	Portsmouth -	E. Conway.	" "	Colchester -	E. Sunderland.
" Aug.†	Derby -	Sir L. Jenkins.	" "	Exeter -	"
" "†	Andover -	"	" "	Barnstable -	"
" Sept.†	Nottingham -	"	" "	Brewers of	"
" Oct.†	Maidstone -	E. Conway.	" "	Exeter.	"
1682-3, Mar.	Norwich -	Sir L. Jenkins.	" Nov.	Canterbury -	E. Middleton.
1683, April	Saltsash -	"	" "	Macclesfield -	E. Sunderland.
" July	East India Com- pany.	"	" "	Tiverton -	"
" Sept.	Northampton -	"	" Dec.	Carlisle -	"
" Oct.	Coventry (con- firmed).	E. Sunderland.	" "	Leicester -	"
" Dec.	Bridgewater -	Sir L. Jenkins.	" "	Lincoln -	"
" "	Warwick (granted and confirmed).	E. Sunderland.	" "	Holliston -	E. Middleton.
1683-4, Jan.	Banbury (granted and confirmed).	Sir L. Jenkins.	" "	Kirkby -	E. Sunderland.
" Feb.	Wells -	"	" "	Grocers of Lon- don.	E. Middleton.
" "	Higham Fer- riers.	"	" "	Lancaster -	E. Sunderland.
" "	Newport -	"	" "	Mercers of Lon- don.	"
" "	Evesham -	"	" "	Drapers of Lon- don.	"
" "	Sandwich (granted and confirmed).	"	" "	Plumbers of London.	E. Middleton.
1684, April	Shaftesbury -	"	" "	Saddlers of Lon- don.	"
" May	Okehampton -	L. Godolphin.	" "	Lyme Regis -	E. Middleton.
" "	Stationers of London.	E. Sunderland.	" "	Leeds -	E. Sunderland.
" June	Bristol -	"	" "	South Molton -	"
" "	Plymouth -	"	" "	Bath -	"
" "	Yarmouth -	"	" "	Cambridge -	E. Middleton.
" "	Bury St. Ed- munds.	"	1684-5, Jan.	Newcastle-upon- Tyne.	E. Sunderland.
" "	Bedford -	"	" "	Merchant Tay- lors of London.	E. Middleton.
" "	Richmond -	"	" "	Fishmongers of London.	"
" "	Tiverton Cloth- workers.	"	" "	Coopers of Lon- don.	E. Sunderland.
" July	Ipswich -	"	" "	Preston -	"
" "	Lenne [Lynn] Regis.	"	" "	Leominster (on forfeiture).	"
" "	Dartmouth -	"	" "	Leathersellers of London.	E. Middleton.
" "	Buckingham -	L. Godolphin.	" "	Apothecaries of London.	"
" "	Scarborough -	E. Sunderland.	" "	Clothworkers of London.	"
			" "	Chester -	E. Middleton.
JAMES II.					
1684-5, Feb.	Worcester -	E. Sunderland.	1684, Feb.	Dunwick -	"
" "	Brynmynham [Birmingham] Free School.	"	" "	Wigan -	E. Sunderland.
1684, Feb.	Grantham -	"	" "	Southwold -	"
" "	Tilers and Bricklayers of London.	"	" "	Bridport -	E. Sunderland.
" "	Barbers and Chi- rurgeons.	"	" "	Founders of London.	"
" "	Haberdashers of London.	"	" Mar.	Stamford -	"
" "	Hedon -	E. Sunderland.	1684-5, Mar.	Wycombe -	"
" "	Innholders of London.	"	" "	Orford -	"
" "	Newark-upon- Trent.	"	" "	Chichester -	E. Middleton.
			" "	Calne -	E. Sunderland.
			" "	New Sarum -	"
			" "	Boston -	"
			" "	Beverley -	"
			" "	Brewers of London.	E. Middleton.
			" "	Shrewsbury -	E. Sunderland.

* These names indicate by whom the King's hand was procured. A summary of this Abstract appears in the Report of the Committee, L.J., XIV., 394, where, however, the number of charters granted to Feb. 1684 is stated as 94, of which 1 passed immediate. The corresponding numbers in this list are 95, of which 4 passed immediate.

† Marked Immediate.

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Date.	Place.	Name.	Date.	Place.	Name.
1684-5, Mar.	Chippenham	E. Sunderland.	1685, June	Kingston-upon-Hull.	—
" "	Blacksmiths of London.	"	" "	Stafford	—
" "	St. Alban's	"	" "	Trinity House	—
" "	Newcastle-under-Lyne.	"	" July	Saffron Walden	E. Sunderland.
" "	Devizes	E. Middleton.	" "	York	—
" "	Salters of London.	E. Sunderland.	" Aug.	Appleby	—
" "	Glaziers of London.	E. Middleton.	" "	Kellingington [Calington].	—
" "	Ironmongers of London.	E. Sunderland.	" "	Kingston-upon-Thames.	—
" "	Pontefract	E. Middleton.	" Oct.	Weavers of London.	—
" "	New Windsor	E. Sunderland.	" "	Butchers of London.	—
" "	Sudbury	"	" "	Torrington	E. Sunderland.
" "	Neath	"	" Nov.	Poulterers of London.	—
" "	Ludlow	"	" "	Hastings	E. Middleton.
" "	Doncaster	E. Sunderland.	" "	Masons of London.	E. Sunderland.
" "	Bodmin	—	" "	Feversham	E. Middleton.
" "	Tregony	—	" Dec.	Romney	—
" "	Ponsmurr, alias Grampound.	E. Sunderland.	" "	Girdlers of London.	E. Sunderland.
" "	Fowy	—	" "	Waxchandlers of London.	—
" "	St. Ives	—	" "	Carpenters of London.	—
" "	Eastlowe	—	" "	Dyers of London	E. Middleton.
" "	Westlowe	—	" Feb.	Reading	E. Sunderland.
" "	Swanzy [Swansea].	—	" "	E. India Merchants (grant and confirmation).	—
" "	Malnesbury	—	" "	Abingdon	—
" "	Skinner's of London.	E. Sunderland.	" Mar.	Brecknock	—
1685, Mar.	East Retford	E. Middleton.	" "	Carmarthen	—
" "	Vintners of London.	"	" "	Tewkesbury	—
" "	Cordwainers of London.	E. Sunderland.	" "	Morpeth	—
" "	Penrhyn	—	" "	Kingston-upon-Hull.	—
" "	Liskeard	—	" "	Broaderers of London.	E. Sunderland.
" "	Launceston	—	" "	Upholders of London.	—
" "	Truro	—	" "	Bakers of London.	E. Middleton.
" "	Harwich	—	" "	Guildford	E. Sunderland.
" April	Liverpool (did not pass).	E. Sunderland.	" "	Curriers of London.	—
" "	Godmanchester	—	" May	Fruiterers of London.	—
" "	Honiton	—	" "	Huntingdon	E. Sunderland.
" "	Tintagell	—	" June	Lichfield	—
" "	Camelford	—	" July	White Paper Makers of England.	—
" "	Plympton	E. Middleton.	" Sept.	Berwick	E. Sunderland.
" "	Bradinnich	E. Sunderland.	" Oct.	Grimsby	—
" "	Lostwithiel	—	" Nov.	Brackley	E. Middleton.
" "	Cutlers	—	" "	Ripon	—
" "	Malchell [Met-hill].	—	1686-7, Jan.	Cardiff	E. Sunderland.
" "	Calne	—	" Feb.	Maldon	—
" "	Scriveners of London.	—	" Mar.	Gravesend and Milton.	E. Sunderland.
" "	Cooks of London.	—	" "	Physicians of London.	—
" "	Joiners of London.	—	1687, April	Isle of Jersey	E. Sunderland.
" May	Goldsmiths of London.	—	" "	Coach and Coach-harness Makers of London.	—
" "	Bewdley	E. Sunderland	" "	Free Fishermen of Thames.	—
" "	Newbury	—	" June	Trinity House of Newcastle (Confirmation).	—
" "	Armourers of London.	—	" Aug.	Merchant Taylors of Exeter.	—
" "	Wilton	E. Sunderland.			
" "	Tallow Chandlers of London.	—			
" "	Turners of London.	—			
" "	Pewterers of London.	—			
" "	Painterstainers of London.	—			
" June	Maydeneth [? Maidenhead] (new Charter).	E. Sunderland.			

† Marked Immediate.

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Date.	Place.	Name.	Date.	Place.	Name.
1687-8, Jan.	Cloth-workers of London (grant of byelaws).	—	1688, Sept. †	Cinque Ports	—
1687, Sept.	Distillers of London.	—	" " †	Oxford	—
1687-8, Mar.	† Exeter - -	E. Sunderland.	" " †	Barnstable	—
1688, April	Totnes - -	"	" " †	Bishop's Castle	—
" June	Poulterers of London.	"	" " †	Southampton	—
" July †	Quinborough [Queenborough].	"	" Oct.	Poole	—
" " †	Newcastle-upon Tyne.	"		A Restitution to the Citizens of London of all their franchises before the judgment on the <i>Quo Warranto</i> .	—
" " †	Tamworth - -	—	" "	A like Restitution to the several Companies of London.	—
" Aug. †	Hertford - -	—	" "	A like to the Mayor and Citizens of Chester.	—
" " †	New Woodstock	—	" Nov. †	Winchester (granted and restored).	—
" " †	Nottingham - -	—	" " †	Doncaster (granted and restored).	—
" " †	Wells - -	—	" " †	Grocers of London (granted and restored).	—
" " †	French Ministers.	E. Sunderland.	" " †	Vintners of London (granted and restored).	—
" Sept. †	Buckingham - -	"	" " †	Drapers of London (granted and restored).	—
" " †	Evesham - -	—	" Dec. †	Poole (granted and restored).	—
" " †	Tiverton - -	—			
" " †	Calne - -	E. Sunderland.			
" " †	Salisbury - -	—			
" " †	Taunton - -	—			
" " †	Brackley - -	—			
" " †	Grimsby - -	—			
" " †	Chester - -	—			
" " †	Norwich - -	—			
" " †	Winchester - -	—			
" " †	Colchester - -	—			
" " †	Marlborough - -	—			
" " †	Ipswich - -	—			
" " †	Leicester - -	—			
" " †	Grantham - -	—			
" " †	Boston - -	—			
" " †	Bridport - -	—			
" " †	Lenne [Lynn] Regis.	—			

* "A charter granted to build or hire a church for the worship of God after the manner of French Ministers' use in France."

† Marked *Immediate*.

(ii.) Abstract of the Dispensations with Penal laws granted by the late King James.†

Date.	Procured by.	Dispensation.
1685-6, Jan. -	E. Sunderland -	A Dispensation with George E. Dunbarton and many others from taking the Oaths of Supremacy and Allegiance, the Sacrament and other Tests enjoined by several Acts of Parliament, declaring that they shall enjoy their several offices, notwithstanding the said Acts.
" - March	" -	A like Dispensation with William, E. Powis, and many others.
1686, May - (Immediate).	" -	A Licence and Dispensation to Obadiah Walker, Nathaniel Boyse and Thomas Deane and John Bernard, from taking the Oaths of Allegiance and Supremacy, making the Declaration and taking the Sacrament, etc., and to absent from Church and Common Prayer, etc.

† See L. J., XIV., 394.

Date.	Procured by.	Dispensation.
1686, May - (Immediatè).	E. Sunderland -	A Licence unto Edward Slater, of Putney, to keep schools to instruct youth and receive boarders, and a Dispensation to him to absent from his curacy of Putney and Rectory of Eshare [Esher], from reading the Common Prayer and administering Sacraments without any pains, although he omit doing anything enjoined by, or act contrary to many Acts of Parliament.
1686, Dec. -	" -	His Majesty's Royal Dispensation and Pardon to John Massy, Dean of Christ Church, for absenting himself from Church, and for omitting to do several things enjoined by the several Statutes therein mentioned.
1686-7, Feb. -	" -	A Licence to Mordant Webster, John Duffs, John Bromley, Francis Nelson, Thos. Carew, Edward Goodall and Fitzraufe [Fitzralph] Chamberlaine to keep schools and instruct youth and keep boarders; and a Dispensation and Pardon for their acting contrary to, or omitting to act what is enjoined by several Statutes in the Licence mentioned.
1685-6, March	—	A Licence to Henry Hills, printer to his Majesty's Household, and Chapel, to print and sell divers Romish books.
1686-7 Feb. -	E. Sunderland -	A Licence, Dispensation and Pardon to Joshua Bassett, Clement Boulton, William Thompson, Clement Scott, John Bassett, and Andrew Popham for their acting contrary to, or omitting to act what is enjoined by several Statutes in the Licence mentioned, and that they may have and enjoy places, dignities, and preferments.
" March	" -	John West being presented by the Lord Lawarre [Delawar] to the prebend of Werwell [Whorwell] in the county of Southampton and diocese of Winton, he not being a priest nor in orders, his then Majesty granted a Dispensation, that he might be instituted and inducted into the said Prebend, although he shall act contrary to, and omit to perform what is enjoined by several Statutes in the Licence mentioned.
" March	" -	A Licence to John Gibbs to keep schools, instruct youth, and keep boarders, with the like Dispensation.
1687, June -	—	Sir Edward Hales, Bart., constituted Lieutenant of the Tower of London, with the like Dispensation.
" July -	E. Sunderland -	A like Dispensation to Henry, L. Arundell of Wardour and many others.
" July -	" -	A Grant unto Sir Henry Titchbourne of the office of Lient-General of His Majesty's Ordnance, and with the like Dispensation.
" Aug. -	E. Middleton -	His Majesty constitutes Sir John Peake Lord Mayor and many others Commissioners or Lieutenant for the City of London, with the like Dispensation.
1686, May -	E. Sunderland -	A Licence to Obadiah Walker to print and sell divers Popish books.
1687, Oct. -	—	A like to Matthew Turner, Bookseller.
" Nov. -	E. Sunderland -	A Licence to Edward Jolly and several others to keep schools and absent from their livings, with a clause of Dispensation for acting contrary to several Statutes.

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Date.	Procured by.	Dispensation.
1687, Nov. -	E. Sunderland -	A Commission of Lieutenancy for the North Riding of the County of York to the Lord Fairfax, with a clause of Dispensation usually inserted in Commissions of the Peace.
" Nov. -	"	A like Commission for the County of Stafford to the Lord Aston, with a like clause of Dispensation.
" Nov. -	—	A like for the County of Worcester and City and County of the same, to Francis, Viscount Carrington.
" Nov. - (immediate).	E. Sunderland -	A Pardon and Dispensation to Sir Nicholas Butler, Knt., John Mawson, Richard Hutchinson, Benjamin Thornburgh, James Pears, Thomas Carleton and Major Knevet Hastings for acting contrary to, or omitting to do what is enjoined by several Statutes.
" Dec. -	" -	A Grant to the Duke of Berwick of the office of Constable of the Castle of Porchester, Lieutenant of the Forest of Soutbeare and Warden and Keeper of the New Forest, etc., with a clause of Dispensation usually inserted in Commissions of the Peace.
" Dec. -	" -	A Commission of Lieutenancy to the Duke of Berwick for the County of Southampton, with the like clause of Dispensation.
" Dec. -	—	A like Commission for the County of Derby to the Earl of Huntingdon, with the like clause.
" Dec. -	—	A grant to Philip, Lord Cardinal of Norfolk High Almoner, of all goods, chattels, and debts of <i>Felo's de se</i> and Deodands, etc., with the like clause.
" Dec. -	E. Sunderland -	A Commission of Lieutenancy for the County of Kent and City of Canterbury and County of the same to the Lord Tenham, with the like clause.
1687-8, Jan. -	" -	Same for County of Rutland to E. Peterborough, with a like clause of Dispensation usually inserted in Commissions of the Peace.
" Jan. -	" -	A Grant to Joseph Bathurst and William Doddington of the office of the Court of Common Pleas at Port Royal in Jamaica, with the like clause of Dispensation.
" Feb. -	—	A Commission of Lieutenancy for the County of Essex to Thomas, Lord Petre, with a clause of Dispensation <i>ut supra</i> .
" Feb. -	—	Same for the County of Chester and City of Chester and County of the same, to William, Marquess of Powis, with a like clause <i>ut supra</i> .
" Feb. -	—	A Constitution of Sir Nicholas Butler, Knt., Henry Browne, Esq., Sir Dudley North, Knt., Sir John Werden, Bart., and William Culliford, Esq., to be Commissioners of the Customs, with a clause of Dispensation <i>ut supra</i> .
" Feb. -	—	A Commission of Lieutenancy for the County of Sussex to Francis, Viscount Montague, in the room of E. Dorset and Middlesex, with a like clause <i>ut supra</i> .
" Feb. -	—	Same to E. Pembroke and Montgomery and E. Yarmouth for the County of Wilts, with a clause of Dispensation <i>ut supra</i> .
" Mar. -	E. Sunderland -	Same for the West Riding of the County of York and City of York and County of the same to the Lord Thomas Howard, with a like clause of Dispensation.

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Date.	Procured by.	Dispensation.
1688, April -	E. Sunderland -	A Grant to William, Marquess of Powis of the offices of Steward of several manors in Wales, with a clause of Dispensation usually inserted in Commissions of the Peace.

(iii.) Abstract of all Pardons with *non obstantes* and Clauses of Dispensation granted from the four last years of King Charles II. and in the reign of the late King James.*

Date of Pardon.	By whom Procured.	To whom Granted.	For what Granted.
1682, April -	Mr. Sec. Jenkins -	John Bennett, Esq. -	Of all rapes, felonies and other offences, except treason and murder.
" May -	E. Conway -	Will. Dowsing.	
" June -	E. Conway -	Alex. Weeks -	Of all crimes, except murder, burglary, perjury, and felony.
" July -	" -	Thos. Wheatley -	For coining.
" Sept. †	" -	Sam. Hunter -	For killing Rob. Tompson.
" July -	" -	John Vincent -	For forgery.
" Oct. † -	— -	Ralph Benton -	For killing Andrew Williams.
" Oct. † -	— -	Matt. Filboy -	For killing Giles Vaniere.
" Oct. † -	E. Conway -	Sir G. Saunderson -	For killing Francis Batty.
" Dec. -	" -	Oliver Lyme, James Vernon, and Henry Colchester, Officers of the Customs.	For exporting and importing prohibited goods.
" Dec. -	" -	Sam. Thresher -	Of all misdemeanours, crimes and contempts.
1682-3, Feb.	Mr. Sec. Jenkins -	Rob. Lever -	Of barratry.
" Feb.	E. Sunderland -	Jas. Leslie -	For killing Henry Glover.
" Feb.	Mr. Sec. Jenkins -	Earl of Conway -	Of all crimes.
" Mar.	E. Sunderland -	Giles Spicer -	For killing John Pigott.
" Mar.	" -	Thos. Row -	For transporting wool.
1683, April -	" -	Sam. Jones -	For speaking defamatory words.
" May -	" -	Mary Clark -	For killing her bastard child.
" May -	— -	John Watson -	For extortion.
" May -	Mr. Sec. Jenkins -	Oliver Lyme, James Vernon, and Henry Colchester, Officers of the Customs.	For importing and exporting prohibited goods.
" May -	" -	Ralph Rawson -	Of all treasons, etc.
" June -	— -	John Lacy -	For killing Thomas Ellis.
" July -	E. Sunderland -	Benj. Hinton -	Of extortion.
" Aug. -	" -	John Littleton -	For killing Richard Berdsley.

* See L. J., XIV. 394.

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Date of Pardon.	By whom Procured.	To whom Granted.	For what Granted.
1683, Sept. -	Mr. Sec. Jenkins -	Josiah Keeling -	Of all treason, etc.
" Nov. -	" -	James, Duke of Monmouth.	Of all treason, etc.
" Dec. -	" -	Giles Beale -	For clipping.
" " -	" -	Capt. Sackville Tutton.	For killing Acred Haslewood.
" " -	" -	Thos. Shephard -	Of all treasons, riot, etc.
" " -	" -	William, Lord Howard of Escrick.	Of all treasons.
" " -	" -	Rich. Spencer -	For clipping.
" " -	" -	George Cowey and Dennis O'Brian.	For killing John Terwit.
1683-4, Jan.	Mr. Sec. Jenkins -	George Mountague -	For killing Lewis Brian.
" Feb.	Mr. Sec. Jenkins -	Will. Ridley -	For clipping.
		Will. Tallemach -	For killing Will. Carnegie.
1684, May -	Mr. Sec. Godolphin	John, Lord Berkely, and John Berkely.	For killing Ralph Tonycliff.
" June -	E. Sunderland -	Sir Will. Kingsmill -	For killing Will. Haslewood.
" July -	" -	Cardell Goodman -	Of all robberies.
" " -	Mr. Sec. Godolphin	Will. Watkins -	Of barratry.
" Aug. -	E. Sunderland -	Hugh Montgomery	For killing Hugh Rutter.
" Sept. -	" -	Edward Osborne -	For clipping.
" Dec. -	" -	Thos. Montgomery -	For killing Walter Narbourne.
1684-5, Jan.	—	Henry St. John -	For murder of Sir Will. Eastcourt, <i>alias</i> Escott.
" "	—	Edmund Webb -	For murder.
" "	E. Middleton -	Philip, Prince of Savoy.	For killing the Count of Banier.
" "	—	George Porter -	For killing Sir Jas. Hackett.
" "	E. Middleton -	Thos. Rosewell -	Of treason, etc. (so that he find security).
1685, March	E. Sunderland -	Eleanor Bonnet -	For clipping.
" May -	—	Francis Minshull -	For killing Thos. Battle.
" June	—	John Carll -	For felony, etc.
" Oct.†	E. Sunderland -	Nath. Wade, and several others.	Of all treasons, etc.
" " -	" -	Will. Knapton -	Of treason, etc.
" Nov. -	" -	Ford, late Lord Grey	Of all treasons, etc.
" " -	" -	Cardell Goodman -	Of all robberies, etc.
" " -	" -	Roger Hoare -	Of all treasons (provided he find security).
" " -	E. Middleton -	John Bramston -	For killing Aurelius Piercy Wiseman.
" ,† -	E. Sunderland -	George, Earl of Dunbarton, Rob. Rumsey, Hugh O'Conner, and many others.	For executing their offices without taking the Oaths of Allegiance and Supremacy, Test and Sacrament, and for having done anything contrary to the laws.
" Dec. -	" -	Francis Hosier -	For clipping.

† Marked "Immediate."

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Date of Pardon.	By whom Procured.	To whom Granted.	For what Granted.
1685, Dec. -	E. Sunderland	- Edward Whitehead -	Of high treason.
" " -	"	- Rob. West -	Of all treasons, etc.
" " -	—	John Pacy.	
" " -	—	William Buckler.	
" " -	E. Middleton	- Thos. Culpeper -	For assaulting the Earl of Devonshire.
1685-6, Jan.	E. Sunderland	- Captain Anthony Hastings.	For killing Nath. Ludlow, in Spain.
" "†	"	- George, Earl of Dunbarton, John du Four, and many others in the grant mentioned.	For executing their offices without taking the Oaths enjoined by Act of Parliament.
" "	E. Middleton	- Thomas Culpeper -	For an assault upon the Earl of Devonshire.
" Feb.	E. Sunderland	- John Hampden -	Of all treasons, etc.
" "	"	- Duke of Grafton -	For killing John Talbott.
" Mar.	"	- John Greeneway -	Of all treasons, etc.
" "	—	Edward Strode.	
" "	E. Middleton	- Thos. Babington and Tracy Pouncefort.	
" "	"	- Samuel Story.	
" "	E. Sunderland	- Edmund Prideaux.	
" "	"	- Joseph Whetham, John Smith, and Thos. Walsh.	
" "	—	Richard Sams.	
1686, April -	—	Thomas, Earl of Stamford.	
" " -	—	Arthur Parsons, Philip Cornish, and Rob. Talbott.	
" " -	E. Sunderland	- Thos. Scrope, John Scrope, and Ichabod Chancey.	With <i>non obstantes</i> to 35 Eliz., or any other Statute against Seditious meetings, or not coming to church.
" " -	"	- John Templeman -	Of all treasons, etc.
" " -	—	Zachary Wyatt, Rich. Scading, Thos. Bray, and Richard Sweet.	
" " -	E. Sunderland	- Philip Speed -	Of all treasons, etc.
" " -	—	John Toy -	For felony, etc.
" " -	E. Sunderland	- Rich. Hubbard, Randolph Sparrow, Ellis Ashpoole, and Wm. Williams.	Of all treasons, etc.
" " -	"	- Miles Fleetwood -	For a misdemeanour.
" " -	—	Thos. Samuel.	
" May -	—	Rich. Hawker and Wm. Coleman.	
" " -	E. Middleton	- Samuel Barnardiston	
" " -	—	John Amery.	
" " -	—	Christopher Cook.	
" " -	—	Nich. Locke and Joshua Locke.	

† Marked "Immediate."

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Date of Pardon.	By whom Procured.	To whom Granted.	For what Granted.
1636, May -	E. Sunderland -	Thos. Cotton, Francis Ashman, and Rich. Coles.	For killing Rich. Newey and Francis Loggins.
" " -	—	Nathaniel Wade -	Of all treasons, etc.
" June -	—	Roger Knight, and several others.	Do.
" " -	—	Matthew Neck -	For forgery.
" " -	—	John Gardner -	Of treason, etc.
" " -	—	John Jones.	
" " -	—	Hugh Chamberlain.	
" " -	—	Edward Cooper -	For killing George Cleyton.
" " -	—	Thos. Rawlins -	Of all treasons, etc.
" " -	—	Charles Hudson, of Jamaica.	
" " -	E. Middleton -	Henry Griffith.	
" " -	E. Sunderland -	William Tate -	For misdemeanours, etc.
" " -	" -	Sarah Blake -	Of all treasons, etc.
" " -	—	William Strode.	
" " -	—	Francis Vaughan.	
" " -	—	John Palmer and John Webber.	
" Aug. -	E. Middleton -	Thos. Johnson and several others.	
" " -	E. Sunderland -	Thos. Dore.	
" " -	" -	George Talbott -	For killing Christopher Bousby (with a proviso for transportation).
" " -	" -	Anne Smith -	Of all treasons, etc.
" Sept. -	" -	Rob. Taylour, Will. Thompson, and Hugh Cross.	Do.
" " -	—	Rob. Charnock, Rob. Ewin, George Farn- din, and Francis Vincent.	
" " -	—	Maximilian Talbott, and several others.	
" " -	—	Daniel Cary.	
" Oct. -	—	George Peppin.	
" Nov. -	—	Edward Norton.	
" " -	E. Middleton -	John Stapleton -	For putting out one of the eyes of Barth. Russell.
" " -	E. Sunderland -	Daniel Blake -	Of all treasons, etc.
" " -	—	Thomas Hooper.	
" " -	—	John and Phineas Showers.	
" Dec. -	—	John Bennett.	
" " -	E. Middleton -	Peter Parry.	
1636-7, Jan.	E. Sunderland -	Stephen Lobb.	
" " -	" -	Cheyney Culpeper -	For killing Francis Minshall.
" " -	—	Henry Ireton and William Turner.	
" " -	E. Middleton -	Lawrence, Earl of Rochester.	Of all debts and ac- counts.

† Marked "Immediate."

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Date of Pardon.	By whom Procured.	By whom Granted.	For what Granted.
1686-7, Feb.	E. Sunderland	- James Hooper.	Of all treason, etc.
" "	—	George Speke, his wife, and two sons.	
" Mar.	—	Michael Levy	For forgery, etc.
" "	—	Will. Freeman	- For killing Ralph Freeman.
" "	—	Matthew Mead	- Of all treasons, etc. contrary to 35 Eliz.
" April	E. Middleton	- Sir Patience Ward.	
" June	E. Sunderland	- John Harper	- Of all treasons, etc.
" July	—	George Forster	- For killing George Aldridge.
" "	E. Middleton	- John Willoughby	- For quartering one of his Majesty's Regiments in Northampton about April 1686 in the absence of the Major.
" Aug.	E. Sunderland	- John Power and James Eaton.	For killing James Lindsey.
" "	—	Sir Francis Drake	- Of all treasons, etc.
" "	—	Charles Gerard, Esq., commonly called Lord Brandon.	
" Oct.-	E. Sunderland	- Thomas Griffith	- For killing Richard Stockwell.
" Nov.-	—	Richard Kent and Charles Dunsecomb.	For extortion and usurious contracts, etc.
" "	E. Middleton	- Thos. Hobdon and Nath. Mahew.	For robbery.
" ,†	E. Sunderland	Sir Nich. Butler, and others.	For acting contrary to certain Statutes.
" Dec.	—	John Trenchard	- Of all treasons, etc.
" "	—	Miles Sandys	- Of misdemeanours.
1687-8, Mar.	—	Thos. Gundry	- For procuring fines to be passed by one under age.
" "	—	Sir Patrick Trant, and others.	For extortion and usurious contracts, etc.
1688 May	—	Marcus Trevor	- For killing John Trevor.
" Sept.-	—	Richd. and John Philipps.	Of all misdemeanours, etc.
" ,†	His Majesty's Gracious and General pardon		(with some exceptions) of all treasons, etc.
" Oct.†	Do.	Do.	Do.
" ,†	E. Middleton	- E. Sunderland	- Of all treasons, &c.
" ,†	E. Sunderland	- Sir Robert Wright.	
" ,†	"	- Earl of Huntingdon.	
" ,†	—	Sir Thomas Jenner.	
" ,†	E. Sunderland	- Rich. Graham and Philip Burton.	
" ,†	E. Middleton	- Earl of Mulgrave.	
" ,†	—	Sir Robert Clerke	- Of all treasons, crimes, and neglects, &c.
" ,†	—	Earl of Peterborough and Duchess of Norfolk.	Of all treasons &c.

† Marked "Immediate."

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Date of Pardon.	By whom Procured.	By whom Granted.	For what Granted.
1688, Oct.† -	—	Sir Nicholas Butler.	
" "† -	—	Bishop of Durham.	
" "† -	—	Sir John Moore.	
" "† -	—	Sir Christopher Vane, Sir Thomas Tillie, Knt., and John Harrington, Esq.	
" "† -	—	Henry Guy, Esq.	
" "† -	—	Bishop of Chester.	
" "† -	—	George, Lord Jeffreys	Of all treasons, &c.
" Nov.† -	—	John, Lord Belasyse.	
" "† -	—	Sir John Ernle -	Of all treasons, &c.
" "† -	—	Lord Dover.	
" "† -	—	Christopher Vane.	
" "† -	E. Middleton	John Bingham -	For killing Francis Harnage.
" Dec.† -	"	Earl of Milford -	Of all treasons, &c.
" "† -	—	James, Earl of Salis- bury.	Do.
" "† -	—	Sir Edward Hales, George Benyon, and Chas. Hales, Esq.	Do.
" "† -	—	Thomas Howard -	Do.

† Marked "Immediate."

A true Abstract. Examined by me, *Geo. Wooddeson*. A true Abstract, Thos. Watkins. [Delivered in this day on oath by George Wooddeson, Clerk to the Signet. Thos. Watkins, the Clerk of the Privy Seal, also attended, and said he had examined the above by the Privy Seal Book. (Com. Book, 11 Dec.). *Wooddeson* having been ordered by the Committee on Nov. 20 to attend with the books of the Signet office, stated on the 22nd that being under an oath, he could not bring them without the King's order, and that the Committee of the Commons, that had them, applied to the King by the Secretary for them. *Ordered*, That the House be moved for an Address (Com. Book, Nov. 20, 22). The House on report, agreed to an Address for the books, and the King gave his consent to their production* (L. J., XIV., 352, 356). On Dec. 4 *Wooddeson* attended the Committee with the books as ordered on Nov. 29, and stated that he had been Deputy Clerk of the Signet above 20 years. He knew nothing of the three heads in the order. He was then ordered to make the copies, &c. above. (Com. Book, Nov. 29, Dec. 4).]

(g.) 11 Dec. 1689. Paper showing who was Privy Seal at the time of granting new Charters, from Oct. 1682 to March 1686-7 inclusive. *Noted* This is a true Copy out of the several months that the Privy Seal was granted to the custody of the persons above mentioned. Thos. Watkins. The contents are given in the Report of the Committee, L. J., XIV., 394. [Delivered in this day by Thos. Watkins. He first attended the Committee on 4 Dec. and stated that he had been Clerk of the Privy Seal

* Leave had similarly been given by the King on Nov. 9 to inspect the Council Books of Charles II. and James II. L. J., XIV., 332, 336.

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since Charles II.'s time. Being sworn, he said that he knew nothing as to who were the advisers of L. Russell's murder, or of the other heads mentioned in the Order, but that Mr. Brent, Mr. Graham and Mr. Burton brought to the Privy Seal the warrants relating to the Charters and told them at their peril they must obey them, and they did the business without fee. These things were done by the King's immediate Warrant. He remembers not whether any *Quo Warrantos* passed the Privy Seal in King Charles' time. They gave the Lord Privy Seal an account once a month of what was done by a mediate warrant. The L. Privy Seal knows nothing of what is done by immediate warrant. Refers to Stat. 27 Hen. VIII. c. 11. Proclamations pass by the Attorney-General and never come to the Privy Seal. Wallingford Charter (read), passed by the then L. Privy Seal. (Com. Book, Dec. 4, 11).]

- (r.) 13 Dec. 1689. Paper stating that Ralph L. Montague, Master of his Majesty's Great Wardrobe, being at present abroad, desires that a *Caveat* may be entered that no Grant pass to empower any person to make those provisions for his Majesty's service that were usually furnished by the Master of the Great Wardrobe until he is first heard by his Counsel. He having a grant of the said place under the Great Seal during life with the power of making a deputy, therefore humbly conceives the execution of his office is his freehold. Signed Robert Nott, Deputy. *Endorsed* as dated. [Robert Nott (sworn at the Bar) being called in by the Committee this day and asked what he knows of the three heads, says he knows nothing of the two first, but says that not long after the Lord Russell's death the Lord Montague went into France and left him his deputy of the Great Wardrobe and commanded that nothing should pass to the prejudice of his office in his absence; quickly after which there was an Inquisition to examine the miscarriage of his office and was executed in St. Clement's Church to take away his Patent, which was for life; but no fault being found, he heard a Privy Seal was passing by the Lord Halifax to dispense with the Lord Montague's Patent for his place which he had during life. He withdraws. He is called in again and asked what he knows concerning the Asserters of the Dispensing Power. He says he had a copy of the Privy Seal sent him from the Attorney-General, but he remembers not there was any *non obstante* in it. He says he offered a *Caveat* to the Lord Halifax that the Lord Montague might be heard, but L. Halifax said he could not receive it, he must obey the King's commands. He remembers not asserting the Dispensing power in this matter, but L. Montague's Patent was laid aside without hearing him. He delivers in a Copy of the *Caveat*. He withdraws. Charles Bland (sworn at the Bar) being called in and asked concerning the three heads in the Order, says he knows nothing of those than that he carried a *Caveat* to the Privy Seal Office to be entered against a Privy Seal that was to be passed against the dispensing with L. Montague's Patent. He knows not that anyone publicly asserted the Dispensing Power. He left the *Caveat* at the Office to be entered, and paid the fees for it; but about four days after, one Mr. Hastings told him the *Caveat* was not suffered to be entered, and he might have his fees again, but he never went for them. He withdraws. *Ordered*, That Mr. Nott's and Mr. Bland's evidence shall not be reported to the

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House by E. Stamford, as Chairman, but any Lord may acquaint the House therewith. (Com. Book, 13 Dec.).]

155. Nov. 2. *Morin v. Wyborn*. Petition of Thomas Wyborn, Appellant, who became in 1664 a partner with one Zachary Poplar, since deceased, a brewer in Bankside, Southwark, claims certain monies from Respondent, as administratrix of her late husband Petly Wyborn, a cornfactor, in satisfaction of a bond entered into by Zachary, who afterwards became bankrupt, and two sureties, the said Petly and John Cheney, another cornfactor, since deceased. After various proceedings, Respondent brought her bill in Chancery for relief against the bond, and the L. Chancellor Jeffreys in 1688 directed a trial at law, which was had in the same year before C. Justice Wright, when the jury found that the bond was satisfied. The Commissioners of the Great Seal refused a new trial, and decreed Appellant to deliver up the bond and confirmed L. Chancellor Jeffrey's dismissal of his Bill in Chancery for relief against a judgment in an action of trover brought against him by Respondent and Cheney for certain goods delivered to him by Zachary, which was heard before Sir Orlando Bridgeman in 1667. Appeals against this decree and dismissal, and prays that the same may be reversed and proceedings stayed. *Signed* by Appellant; *Countersigned* J. Trevor and W. Hancock. [Brought in this day, L. J., XIV., 331. The Appeal was heard on 19 Dec., *Sir William Williams* (for Appellant): The question is upon the bond, whether satisfied or not. *Mr. Ward* (for Appellant): They endeavoured to get a new hearing, but could not. *Mr. Trevor* (for Respondent): They ground it upon C. Justice Wright's certificate. They had a great favour in having a trial once directed. There is a full satisfaction received out of the brew-house. There never was a penny refunded. If this verdict stands, it makes an end of both causes. *Mr. Holford* (for Respondent): Speaks to the Bill and answer in Chancery. The Speaker then reported, and the Decrees were affirmed. (MS. Min., 19 Dec. L. J., XIV., 376.)]

Annexed:—

(a.) 9 Nov. Answer of Anne Wyborn. Sets forth the proceedings at length. The bond was fully satisfied out of the brew-house, and was found to be so after a full hearing. Prays that the Appeal may be dismissed. *Signed* by Respondent. *Countersigned* Rich. Holford. *Endorsed* as brought in this day.

156. Nov. 2. Oaths (Relief) Bill.—Amended* Draft of an Act for relief of such as have not taken the Oaths within the time limited by an Act of this present Parliament. Whereas by an Act made in the first year of the reign of our Sovereign Lord and Lady King William and Queen Mary, entituled An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths, It is enacted That if any archbishop or bishop or any other person now having any ecclesiastical dignity, benefice, or promotion, shall neglect or refuse to take the oaths by the said Act appointed to be taken in such manner as by the said Act is directed, before the first day of August, in the year 1689, every such person and persons so neglecting or refusing, shall be and is and are thereby declared and adjudged to be suspended from the execution of his or their office by the space of six months, to be [accountable] *accounted* from the said first day of August; whereby several persons, who by reason of absence, want of Quarter Sessions in those parts where they resided, or for

* The omissions are shown by square brackets and the additions by italics.

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some other cause, did not take the oaths in the time prescribed by the said Act, are rendered incapable of officiating till the first day of February next ensuing, though they should have taken the said oaths the next day after the time limited; Be it therefore enacted by the King and Queen's most Excellent Majesties by and with the advice and consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same; That from henceforth, if any Archbishop or bishop or any other person now having any ecclesiastical dignity, benefice, or promotion shall have taken the oaths, as by the aforesaid law prescribed, since the first of August in the year 1689, or shall hereafter before the first day of February in the same year take the said oaths, he or they so doing shall immediately be *and are hereby* absolved and acquitted of his or their suspension, any law or statute to the contrary notwithstanding. [Read 1^a and 2^a this day, L. J., XIV., 330. The Amendments were made in Committee (Com. Book, 8 Nov.). The Bill was finally laid aside in the Commons after a second reading on 30 Dec. (C. J., X., 319); though the Lords sent a message on 11 Dec. to remind them of the Bill (*ib.* 316).]

157. Nov. 7. Walcott's (Attainder Reversal) Bill.—Draft of an Act for reversing the Attainder of Thomas Walcott, Gent. Whereas Thomas Walcott, Gent., on a Commission of Oyer and Terminer held for the City of London and County of Middlesex on Thursday, the 12th day of July in the year of our Lord 1683, at the Sessions house in the Old Bailey, London, by means of an illegal return of jurors, and by a partial and unjust construction of law, was wrongfully convicted and attainted, and afterwards executed for high treason. May it therefore please your most Excellent Majesties, at the humble petition and request of John Walcott, Gent., son and heir of the said Thomas Walcott, That it be declared and enacted, and be it enacted by etc. that the said conviction, judgment, and attainder be and are repealed, reversed, made and declared null and void to all intents, constructions and purposes whatsoever, as if no such conviction, judgment or attainder had ever been had or given; and that no corruption of blood, or other penalty or forfeiture of honours, goods, chattels, lands, tenements or hereditaments in the Kingdoms of England and Ireland or either of them be by the said Conviction and Attainder incurred, any law, usage or custom to the contrary notwithstanding. Signed WILLIAM R. [Read 1^a this day, L. J., XIV., 333. Laid aside, after re-commitment, in the Commons. C. J., X., 322.]

158. Nov. 7. Watts' Naturalization Act.—Draft of an Act for naturalizing William Watts. [Read 1^a this day;* Royal Assent 16 Dec. L. J., XIV., 333, 373. 1 and 2 W. & M., c. 3. in Long Calendar.]

159. Nov. 7. Sir R. Derham v. Duvall.—Petition and Appeal of Sir Richard Derham, Knt. and Bart., and Sir John Edwards, Knt. Lady Purbeck, having inherited from her first husband, Robert Danvers *alias* Villiers, certain lands in the County of Radnor, conveyed them in 1675 to Appellants in trust to sell and pay 600*l.* owing by her to James and Deverell on mortgage, and 3,000*l.* and 1,500*l.* to her daughter Frances on mortgage and Statute. The Appellant Derham afterwards married the said Frances, and paid the debt of 600*l.*, and received the

* The Bill was returned without amendment from the Commons by Mr. Christy and others on 25 Nov. (MS Min. No entry in L. J.)

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rents of the estate from the time of his entry in 1676, for which he duly gave accounts, the last of them being stated in 1681, when there remained a balance, after deducting the receipts for rent, of 7,600*l.* due from Lady Purbeck. This was increased by further loans and interest to 8,000*l.* in 1682, when the Appellant Edwards agreed to purchase the estate for that sum, half to be paid then and the remainder when Lady Purbeck and Respondent, her then husband, should convey and levy a fine, and Edwards has since been in possession. In 1683 Respondent and his wife brought a bill in Chancery to set aside the purchase, on pretence that the estate was undersold, and to have an account of the profits. The Lord Keeper North, on 23 Feb. 1684, decreed that time should be given to the end of Michaelmas term to find a better purchaser, failing which the Bill to be dismissed. They failed to find one, but obtained various orders from L. Chancellor Jeffreys for delay, and harassed Appellants upon the account, as to which, the Master having made several reports, L. Jeffreys overruled the exceptions thereto on 26 November 1688, being the last cause his Lordship ever heard at Westminster, and while at his lodgings at Whitehall, on or about the day that he withdrew himself, signed the orders and ordered them to be enrolled, in spite of a Caveat entered against enrolment, Derham being then beyond sea and Edwards a hundred miles from London. The Lords Commissioners were unable to grant a Bill of Review, by reason of the enrolment, the grievances being matters of injustice and not errors in law, and Appellants have thus been deprived of nearly 7,000*l.*, as in the Schedule annexed is set forth. Pray that Duvall and his wife and their trustees may be ordered to answer, and that proceedings may be stayed. *Signed* by Appellants; *Countersigned* Ambrose Phillipps and P. Vernon. [Read this day, L. J., XIV., 333. The cause was heard on 6 Dec. *Sir Ambrose Phillipps* (for Appellant) states the case as to the accounts and purchase. We insist on those items that are of consequence. By four successive accounts, which the Lady has allowed, we are shut out of (*sic*), which is very hard. To prove actual payments, when they are admitted, is unjust. The very deed of 600*l.* is set aside. An account is ordered by the L. Chancellor to be brought in within four days, and he beyond sea. We are beyond the pleadings and forms of justice. *Read*, deeds of settlement and discharges of moneys, and the order of the L. Chancellor wherein he is to bring in his accounts within four days. *Sir William Williams* (for Appellants) heard to all the parts read. *Sir Charles Porter* (for Respondent): As to the new evidence to prove the receipts, it was the last cause the L. Chancellor heard. The cause was heard after he left his house. Speaks as to the marriage and times of it and the procurement of a purchase in such a time. It appears Harley's money was actually paid by the books. *Mr. Finch* (for Respondent): I cannot understand these deeds. The estate is come to Sir John Edwards. Two notes to Mr. Harley by Mr. Browne, the scrivener. Several books of accounts produced and receipts read; depositions in Chancery read. Counsel then heard to reply on both sides. Counsel withdrew. Ordered to report on Monday. (MS. Min., 6 Dec., L. J., XIV., 363.) The *L. Speaker* reported the case on 10 Dec., and after debate the decree complained of was affirmed. (MS. Min., 10 Dec., L. J., XIV., 366.)]

Annexed:—

- (a.) 7 Nov. Schedule referred to in preceding and appended thereto.
- (b.) 22 Nov. Answer of John Duvall, Esq., and Elizabeth, commonly called Viscountess Purbeck, his wife. The decrees complained of were made after full hearings, and are just and well

grounded. Prays that the Appeal may be dismissed with costs, as vexatious. *Signed* Charles Porter. L. J., XIV., 350.

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- (c.) 23 Nov. Petition of Sir John Edwards. Prays for an order for his witnesses to attend at the hearing to prove deeds, etc., and that the documents in the custody of Sir J. Francklyn, a Master of Chancery, and those which Respondent has had away may be then produced. L. J., XIV., 352.

160. Nov. 7. Courts of Justice (Irregularities).—Papers connected with an Inquiry into irregularities in Courts of Law. [These proceedings grew out of a complaint made by E. Macclesfield to the Committee for Privileges, at its first meeting, against the Courts of Law, for which see No. 61. The House this day referred it to the Committee for Privileges* to enquire into what irregularities there are in the Courts of Westminster Hall (L. J., XIV., 334), but the Committee is afterwards referred to in L. J., as an ordinary Select Committee, and its proceedings are recorded in the Com. Book. This Inquiry was subsequently extended to the Court of Chancery, the Courts of the Grand Sessions in Wales and the Courts of the Counties Palatine.† The Committee met on Nov. 9, 16, 19, 23; Dec. 3, 7, 10, 17, 19, 21, and Jan. 8, 11, 15, 17, and 21, their Chairman, on Nov. 9 and Dec. 7, being E. Bridgewater, and on the remaining days L. Ossulston. On 9 Nov. the Committee ordered that the Judges of the several Courts in Westminster Hall send in a list of the several offices and officers in their respective Courts and a Table of their ancient fees. Then follows a statement that one grievance in the Court of King's Bench is that the keeper of the King's Bench Prison doth, the first day of every term, make oath that all his prisoners are within the Rules of the Court, though at the same time some of them are out of the kingdom (see Paper *h*). Mr. Petyt, Keeper of the Records in the Tower, who had been ordered on the 7th to attend [L. J., XIV., 334], being present, says that, by the Stat. 14 Edw. III., one Prelate, two Earls and two Barons may be commissioned to regulate abuses in the proceedings in the Courts in Westminster Hall. In 18 Edw. III. there was such a Commission granted. In Ric. II.'s time there was an Act made in L. Lovell's case. He informs the Committee that the Records in the Tower are in great disorder, and that the Calendars to the Records are embezzled, so much that he cannot give so good an account of them as he ought to do. He has been 30 weeks in the office, and has not yet got in that time 30*l.* perquisites. His predecessors had 500*l.* a year salary. He is to have but 200*l.* Ordered to report that Mr. Petyt may have the same salary as Mr. Pryne had, as well as a present consideration to enable him to keep Clerks to make new Calendars and to make the Office of Records in the Tower more useful. The House, on this report, agreed to address the King accordingly (L. J., XIV., 342).—On 16 Nov. there is a memorandum by the clerk that there not

* The Motion, as first entered, was "to appoint a Committee to inspect and regulate the Courts of Justice in Westminster Hall." These words are struck through, and the order made as in L. J., XIV., 334 (MS. Min., 7 Nov.).

† See, as to Wales and the Counties Palatine, L. J., XIV., 348, 352. No corresponding Order of the House was made as to the Court of Chancery, but the Commissioners of the Great Seal were ordered by the Committee to send in a list of the offices and officers of the Court of Chancery, and a table of their ancient fees. (Com. Book, 19 Nov.). The adjourned debate on extending the Inquiry to the Ecclesiastical Courts appears to have come to nothing.

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being lords enough to make a Committee, the lords then present commanded him to receive the Tables of Fees brought in by the officers of the Courts of King's Bench, Common Pleas and Exchequer (Papers *b.* 1-19, *c.* 1-17, *d.* 1-17).—On 19 Nov. the Committee ordered to move the House that the Judges be sent to recommend three ancient clerks of their respective Courts to be sworn at the Bar to examine the several Tables of the ancient Fees delivered in by the officers of the several Courts, which Clerks are to bring certificates from the said Judges of their honesty and ability (cf. L. J., XIV., 348). (Papers *a.*) Then a Particular of Grievances to be redressed, delivered in from Mr. Brunskell, is read. (Papers *i.*)—On 23 Nov. the above Order was repeated and a paper entitled Complaints against the Fees in the Courts of the Great Sessions in Wales is read. (Paper *g.*) Ordered that the Judges of the Grand Sessions in Wales do give accounts of the offices and officers in their respective Courts, and also Tables of their ancient Fees. Ordered that the House be moved to call for the like Return from the Chancellors of the Duchies of Lancaster (Papers *f.*) and Durham, and the Chief Justice of Chester. Mr. Charles Ballet ordered to attend. Mr. Brunskell's Paper read and given back to him. He pretends to acquaint the Committee how the subject is aggrieved in Chancery. He is directed to bring in a particular in writing of the grievances in the Court of Chancery.—On 3 Dec. the Clerks sworn at the Bar are ordered to bring in similar Returns of Fees and officers. The Chief Justice of Chester and the Chancellors of the Duchies are ordered to bring in their Returns on the 16th.—On 7 Dec. *Sir Miles Cooke* brought in a List of the Fees of the Masters of Chancery (*e.*), and *Mr. Barker*, Clerk of the Crown, of those in his office. Another List is ordered from the Clerks of the King's Bench Court on the 10th, and Lists are ordered from the Clerks of Exchequer and Common Pleas on the 17th. The Judges are ordered to send in Tables of Fees of their clerks and officers, and in the meantime to send one or two clerks from each office to be sworn in order to bring in the Lists.—On 10 Dec. a week's further time is given to the Judges, and a similar Order is issued to the Commissioners of the Great Seal for Chancery. Tables of Fees in the Crown Office in the King's Bench are brought in by *Mr. Selyard* and *Mr. Horton* (*b.* 20) who state that they have heard that the fees have been regulated by a Jury of Attorneys. The last time they were so was in the 14th of Charles I. *Charles Ballet* is asked why he will not give L. Ossulston* a Bill? He says he has given him a Bill, and will give him another. He has no Bills of his Lordship's. He has Bills and answers and Breviates, which he has paid for, and if he deliver them up he cannot justify his Bills. He has paid for these copies himself. He is ordered to deliver to L. Ossulston or his Order all the writings he has belonging to his Lordship. The Stat. 3 Jac. cap. 7 is read.—On 17 Dec. Ordered that the House be acquainted that Mr. Ballet has formerly been before the Committee and owned that he has Papers belonging to L. Ossulston which his Lordship cannot get out of his hands. Then Tables of Fees were delivered in

* On 30 April 1689, during the Inquiry by the Committee for Privileges into the encroachments of the Courts of Law upon the Privileges of the Peers, out of which the present proceedings arose, L. Ossulston informed the Committee that he had had wrong done him by a Bill preferred against him in the Exchequer for 20,000*l.* by the Duke of York, on L. Arlington's account, to whom he was neither heir, executor, administrator nor assignee. He was frightened into payment of it. Priv. Book. 30 April 1689.

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from various offices by the clerks. (*b.* 21-23, *c.* 18-32, *d.* 18-20, *e.* 2-7, *f.* 1, 2.) *Mr. Cooling* was ordered to attend and show cause why he has not delivered in the account of Fees of his office.—On 19 Dec. *Mr. Cooling* brought in his Fees. (*b.* 24, 25). (Com. Book, 19 Dec.)—On 31 Dec. it being moved in the Committee for Privileges, that four lords may be commissioned out of Parliament to regulate the Courts in Westminster Hall, debate adjourned. (Priv. Book.)—On 17 Jan. a Petition of Henry Ludlow (*h.*) is read in the Select Committee, complaining of the Puisne judges taking a fee of him as Clerk of the Silver office every issuable term. The Account of the fees of the Judges of the Common Pleas (*d.* 18-19) is read. Ordered that the Judges of the Common Pleas may have a copy of the said Petition and may be heard what they have to say to it at the next meeting, they not having in the account they have given in to the Committee mentioned the fee complained of by Mr. Ludlow. A Bill offered by E. Macclesfield is read for regulating the law. Another Bill for regulation of the Courts of Justice is read.* Proposed that the lawyers that plead at the Bar of the House of Peers may be limited to take no more than for their fee. Memo. that E. Bridgewater has the two Bills till the next meeting of the Committee to consider of them.—On 21 Jan. in Committee for Privileges, E. Bridgewater in the Chair, the Act 14 Edw. III. c. 5. read. Ordered that the clerk search what has been done by the House on the Report made 30 April 1689 upon this business.† (Priv. Book.) *Eod. die.* In Select Committee; Mr. Ludlow's Petition is read in the presence of *Mr. Justice Rokeby* and *Mr. Justice Ventris*, who are heard upon it. They say they found upon their coming to be Judges that Mr. Ludlow, Mr. Nourse and the Clerk of the Kings Silver Office in C. J. Vaughan's time had paid the fee complained of, and therefore they thought they might well demand it. They did not give an account of this fee in the list given in, for that list was only of their clerks' fees, which they thought was all was required by the Order of 7 Dec. *Mr. Ludlow* says Mr. Nourse, who was his predecessor, had often told him that L. C. Justice North was the first that demanded this pretended fee, but Mr. Nourse is now out of town, and he desires he may be summoned. *Mr. Sherley* says he received of Mr. Nourse his fee all the time the L. C. Baron was one of the Judges of the Common Pleas. Then Mr. Townsend, with his book of fees, Mr. Nourse, and Mr. Farmery, and Mr. Clift (two of the Clerks from the Common Pleas) were ordered to attend and give evidence of their knowledge on behalf of Ludlow and the judges, and Ludlow had leave to be heard by Counsel on the 5th Feb.—On 22 March the Committee was reappointed, on motion (L. J., XIV., 435 ; MS. Min.,) but no further proceedings are recorded.] The papers are as follows :—

- (*a.*) 26 Nov. Names of certain Clerks of the Courts of King's Bench, Exchequer and Common Pleas appointed, on certificates from the Judges (*see* following three papers) to attend to be sworn this day, viz : *For the King's Bench* ; Robert Selyard and Richard Horton (Crown side) ; William Turvill and Nicholas Harding (Plea side). *For the Court of Exchequer* ; ‡ Butler

* See No. 244 (4 April 1690).

† This is Mr. Petyt's Report on the Statute 14 Edw. III. c. 5, for redress of delays of Judgment. It is given *in extenso* in L. J., XIV., 197.

‡ Some other Clerks of the Exchequer were sworn, under a similar Certificate on 14 Dec. See Annex (*a'*) below.

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Buggin (their Majesties' Remembrancer's Office), John Tayleure (Treasurer's Remembrancer's Office), Walter Wallinger (Pipe Office), Charles Haynes (Office of Pleas). *For the Court of Common Pleas*; William Farmery, Silvester Petit and Henry Clift. [These officers, except those for the Common Pleas, were sworn this day at the Bar (L. J., XIV., 354; MS. Min. of date) pursuant to Order of Select Committee of 23 Nov. (Com. Book, Nov. 19 and 23).]

- (a.)¹ Certificate of the Judges of King's Bench, dated 25 Nov. recommending Robert Seliard and Richard Horton, two of the ancient Clerks of the Crown Office in the King's Bench, and William Turvill and Nicholas Harding, two ancient Clerks of the said Court on the Plea Side, to be sworn and attend the Committee, and certifying that they are men of honesty and ability. *Signed* J. Holt, W. Dolben, W. Gregory, G. Eyre. [Brought in pursuant to Order of Committee of 23 Nov., Com. Book, 19 and 23 Nov.]
- (a.)² Certificate by the L. C. Baron and the Barons of Exchequer, dated 26 Nov., recommending, in pursuance of Order of Committee of 23 Nov., Butler Buggin, John Tayleure, Walter Wallinger and Charles Haynes as fit persons to be examined touching the fees delivered in by the several officers of the Court of Exchequer. *Signed* R. Atkyns, Ed. Nevill, N. Lechmere, Jo. Turton. [Com. Book, 19 and 23 Nov.]
- (a.)³ Similar Certificate, dated 10 Dec., recommending, in pursuance of Order of Committee of 23 Nov., John Pottinger, Anthony Parsons, John Walker, Richard Manlove, John Adey, Timothy Whitfield, Robert Urwin, William Whitaker, Michael Baker, and Samuel Brewster, besides those recommended in preceding paper, to be examined touching the Fees of the officers of the Court. *Signed* as preceding. [See Orders of Committee of 19, 23 Nov. and 7 Dec., Com. Book.]
- (a.)⁴ 14 Dec. List of Clerks sworn this day. They are those recommended in last Certificate, except Walker and Manlove, whose names are struck out. MS. Min. No entry in L. J.
- (a.)⁵ Certificate of the C. Justice and Judges of the Court of Common Pleas recommending William Farmery, Silvester Petit and Henry Clift as honest and able men. *Signed* Hen. Pollexfen, John Powell, Thos. Rokeby, P. Ventris. [Written under a copy of the Order of Committee of 23 Nov. See Com. Book, 19 and 23 Nov.]
- (a.)⁶ Certificate of the Lords Commissioners of the Great Seal, recommending the following Clerks, viz.: For the Register's office, G. Edwards; Petty Bag Office, Aaron Pengry; Six Clerks Office, Richard Derbyshire and John Slater; Examiners' Office, William Bampfild; Cursitors' Office, John Hungerford and Abraham Skinner. *Signed* John Maynard, A. Keck, P. Rawlinson. All except Skinner are marked as having been sworn. [Written under a copy of the Order of the Committee of 10 Dec. See Com. Book.]

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- (b.) to (f.) List of Officers and Tables of Fees in the various offices in the Courts of—
 (b.) King's Bench.
 (c.) Exchequer.
 (d.) Common Pleas.
 (e.) Chancery.
 (f.) Duchy of Lancaster.
- (b.) *King's Bench.* (b³.) to (b¹⁹.) inclusive, were probably lodged with the Clerk on 16 Nov. pursuant to Order of 9 Nov. (See Com. Book of dates.) The Lists are as follows:—

(b¹.) 16 Nov. 1689. Presentment of fees taken in the Office of Clerk of the Crown in the Court of King's Bench, 26 Nov., 14 Car., and by the space of thirty years have been used to be taken there, and such as have been used to be taken to this time. *Noted:* Sir Sam. Astry, Clerk of the Crown; Simon Harcourt, Secondary; Robert Selyard, Clerk of the Rules; Rich. Horton, John Weekly, Lionel Fanshaw, Richard Foulks, John Cook, Benedict Brown, William Eyre, Robert Wintour, William Leighton, Edward Croke, Clerks in the said office. *Endorsed* 16 Nov. 1689. By Mr. Symon Harcourt. [See Com. Book, 16 Nov.]

(b².) 16 Nov. 1689. Fees due to the Deputy Marshal of the King's Bench, Thomas Cook, Gent. Subjoined is the following:—"There is now an innovated office of Clerk of the Papers to the Marshal, who claims these fees following [A list follows] . . . By the Jury of Attorneys, who were sworn by his Majesty's Commissioners in the year 1630, to examine into new erected offices and exacted fees, this office (Clerk of Papers) was not so much as named, nor any one of these fees found by them to be due and received. *Endorsed:* The Deputy Marshal's fees, 16 Nov. 1689, King's Bench, Plea Side. Mr. Richard Aston. [See Com. Book, 16 Nov.]

(b³.) Fees due to Sir Rob. Henley, Knt., the Chief Protonotary of the Court of King's Bench, and Richard Aston, his Secondary.

(b⁴.) Fees paid to Thomas Gooding and Simon Folkes, Esqrs., the *Custos Brevium* of the Court of King's Bench, and their Clerks.

(b⁵.) Fees paid to Henry Boulton, Gent., Under Clerk of the Inner Treasury to the *Custos Brevium* of the King's Bench.

(b⁶.) Fees paid to William Tully, Gent., Under Clerk of the Outer Treasury to the *Custos Brevium* of the King's Bench.

(b⁷.) Fees paid to John Todd, John Hollyman, Thomas Maydwell, James Hooton, Henry Boulton, Thomas Gooding, and William Tully, Gent., Clerks of the *Custos Brevium* for their several and respective circuits.

(b⁸.) Fees due and belonging to the Marshal of the King's Bench, Deputy Clerk of the Papers, and other officers, and to the Deputy Marshal, Clerk of the Papers and Tipstaffs. *Endorsed:* A copy of the Table of fees taken out of the

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Crown Office belonging to the Marshal of the King's Bench and his officers.

- (b⁹.) The ancient fees of the Filazers in the Court of King's Bench. *Noted*: These fees are delivered in by John Try, Esq., Filazer of London, on behalf of himself and the rest of the Filazers of the said Court. *Endorsed*: Mr. John Try.
- (b¹⁰.) A particular of the Fees taken by Giles Clarke and Robert Stone, Gent., Clerks of the Papers in the Court of King's Bench.
- (b¹¹.) Fees due to Robert Pugh, Gent., Clerk of the Rules in the Court of King's Bench.
- (b¹².) Fees of Mr. Francis Thacker, Clerk of the Bails and *Posteas* in the Court of King's Bench.
- (b¹³.) Fees of Mr. John Sclater, Clerk of the Declarations in the Court of King's Bench.
- (b¹⁴.) Fees of Robert Warter, Clerk of the Docquets in the King's Bench Office in the Inner Temple.
- (b¹⁵.) Paper entitled "Thomas Higford, Chief Crier and Port of the Court of King's Bench." States that he has no fees but what he receives from and by the hands of the Chief Protonotary out of Judgments and Bails received by Sir Robert Henley.
- (b¹⁶.) Fees usually given to the Criers.
- (b¹⁷.) Fees of Thomas Bromfield, Keeper of the Sign for signing of Writs in the King's Bench.
- (b¹⁸.) Fees due to and taken by and amongst the four Tipstaffs attending the Court of King's Bench, and equally divided amongst them. [Differs from next paper and also from Annex (b²².) below.]
- (b¹⁹.) Another list entitled "Fees due to the four Tipstaffs attending the Court of King's Bench." [Differs from preceding and also from Annex (b²².) below.]
- (b²⁰.) 10 Dec. Fees of the Crown Office in the Court of King's Bench. Corresponds, with a few additions and alterations, with the list in Annex (b¹.) above. Subjoined is a certificate on oath, signed by R. Selyard and Rich. Horton, that the fees above-mentioned have been received in the Crown Office anciently and time out of mind. *Endorsed* as dated. [Delivered in this day by Mr. Selyard and Mr. Horton, who stated they had heard that the fees had been regulated by a jury of attorneys. "The last time they were so was in 14 Charles I." Com. Book, 10 Dec.]
- (b²¹.) 17 Dec. Fees belonging to the Judges of the Court of King's Bench and their Clerks. Those belonging to the Judges are as follows:—

	£	s.	d.
For every <i>Dedimus Potestatem</i>	-	0	6 0
For acknowledging a fine	-	0	6 8
For swearing an Attorney at large	-	1	0 0
For acknowledgment of a deed to be enrolled	-	0	6 8

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	£	s.	d.
For swearing every witness upon Interrogatories - - -	0	6	8
To that Judge who takes a private verdict on a trial at bar - - -	0	6	8
For swearing a Clerk of the Office to the Chief Justice - - -	3	6	8
For acknowledgment of a Statute to the Chief Justice - - -	0	3	4

Signed Robert Hyde. [Delivered in to the Committee this day. Com. Book.]

(b³².) 17 Dec. Fees belonging to the Plea Side of the Court of King's Bench. A head-note states: "We have no authentic table of the ancient fees belonging to the Pleas Side of the Court of King's Bench, which we now present upon our oaths, but have heard upon enquiry that such ancient tables of fees as remained in the King's Bench Office were burned in the Great Fire of London. We have therefore sent to the several officers and Clerks belonging to the same Court for tables of their respective fees, who have returned them to us and are as followeth." The lists of fees relate to the following officers:—

Chief Protonotary, Sir Rob. Henley, Knt.

Secondary, Rich. Aston.

*Clerks of the Papers, Giles Clarke and Rob. Stone.

Clerk of the Rules, Robert Pugh.

*Clerk of the Bails and *Posteas*, Francis Thacker.

Clerk of the Docquets, Robert Warter.

Marshal of the King's Bench, Deputy Clerk of the Papers and other officers.

Deputy Marshal and Clerk of the Papers.

Tipstaffs.

**Custos Brevium*, Thos. Gooding and Simon Folkes, Esqrs., Clerks of the *Custos Brevium*.

*Under Clerk to ditto of the Inner Treasury, Henry Bolt, Gent.

*Ditto to ditto of the Outer Treasury, Will. Tully, Gent.

*Filazers. *Noted* as in (b⁹.) above.

Keeper or Clerk of the Declarations, Mr. John Sclater, with an account of the fees due from the Clerks, Attornies and Filazers.

Seal Office, George, D. Northumberland, Master. *Signed* Thos. Waldron, Sealer.

Lord Chief Justice's Clerk of the Errors.

Keeper of the Seals of the Bills of Middlesex.

Note.—There is an Officer that receives Fines upon filing of Declarations in the said Court, also another officer called Porter or Crier of the said Court,† whose names we do not

* The fees of the officers marked with an asterisk are identical with those given in the corresponding undated lists above, vizt., Annexes (b¹⁰), (b¹²), (b⁴), (b³), (b⁶), and (b⁹). The remainder, with the exception of the last three, which appear here for the first time, contain variations and additions.

† See Annexes (b¹⁵), (b¹⁶), and (b²⁶).

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know, neither have they given us any tables of their fees.
Signed Will. Turvill, Nich. Harding. *Dated* 17 Dec. 1689.
[Delivered in this day by W. Turvill and N. Harding, pursuant to Order of 7 Dec. Com. Book of dates.]

(b²³.) Paper entitled "Officers in the Court of King's Bench, as follows :

1. The Clerk of the Crown, Sir Samuel Astry, Kut.
2. Prothonotary, Sir Robert Henley, Knt.
3. The Custos Brevium of Clerks of the Treasury.
4. The Marshall.
5. The Philazers of the several counties.
6. The Crier and Porter.
7. The Sealer of Writs.
8. The Receiver of Fines.
9. The Keeper of the Seal of the Bills of Middlesex.
10. The Secondary.
11. The Clerks of the Papers.
12. The Clerk of the Rules.
13. The Clerk of the Bails and Posteads.
14. The Keeper of the Files of Declarations.

[*Undated*, but in the same handwriting as the final note to preceding.]

(b²⁴.) Fees of Benjamin Coling, Esq., Grantee of the King of his fines in the Court of King's Bench upon actions. States that in every action of debt, and upon the case for 40*l.* he receives 3*s.* 4*d.*, and according to that rate for any greater sum; for which he pays to the King an annual rent of 20 marks. [*Undated*, but see next paper. On 17 Dec., the Committee ordered Coling to attend at their next meeting, and show cause why he had not delivered in the account of the fees belonging to his office. Com. Book, 17 Dec.]

(b²⁵.) 19 Dec. Fees of Benjamin Coling, Clerk and Farmer, by patent of the King's fines in the King's Bench, as follows:—

He receives for a fine upon judgments in debt	<i>s.</i>	<i>d.</i>
and in actions upon the case and trespass		
for goods above 40 <i>l.</i>	3	4
If one amount to 100 marks and not above		
100 <i>l.</i>	5	0

And so proportionable for greater sums. He is also chief crier and porter of the Court of King's Bench, which he exercises by Deputies, who receive to their own uses all the casual fees in the Court except the following, which he takes himself, viz:—

For every bail taken in Court on the	£	<i>s.</i>	<i>d.</i>
Crown side	0	0	4
For the discharge of every fine	0	0	4
For discharge of every prisoner in Court	0	0	4
For every bail on the Plea side	0	0	4
For Judgments every term the Chief			
Clerk pays him	17	10	0

Signed, Ben. Colinge. *Subscribed*: I humbly certify that I conceive these to be due fees. Richd. Aston, Secondary,

18 December, 1689. [Delivered in by Mr. Coling this day. Com. Book, 19 Dec.]

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(c.) *Exchequer*. (c.)¹ to (c.)¹⁷ inclusive were probably lodged with the Clerk on 16 Nov., pursuant to Order of 9 Nov. The rest were brought in on 17 Dec. pursuant to Order of 7 Dec., (*see* Com. Book of dates). The lists are as follows:—

(c.)¹ Fees of Henry Ayloff, Esq., their Majesties' Remembrancer. *Memorandum*, That in 14 Car. I., in pursuance of His Majesty's Order, signed by his principal Secretary of State, a jury of fifteen of the ancientest clerks sworn in open Court, presented a list of the fees taken then, and for the last 30 years by the Remembrancer.

(c.)² Fees of the eight sworn clerks in the office of their Majesties' Remembrancer, viz., Thomas Hall, Butler Buggin, George Watts, Francis Butler, Gabriel Armiger, William Bathurst, George Carter, and William Walker, with memo. similar to preceding. *Endorsed*, Mr. Eyden, and appended to preceding.

(c.)³ Fees of the Clerk of the Pipe, (Hon. Robert Russell). *Endorsed*, Mr. Russell; Mr. Whitaker, Deputy.

(c.)⁴ Fees of the Secondaries in the office of the Clerk of the Pipe, viz., Walter Wallenger and Thos. Cole, and the other sworn clerks, viz., Joseph Cranmer, Unton Read, Simon Musgrave, Chas. Milbourne, Peter Froude and Philip Tully, and by the clerks of the Leases, as presented in 15 Car. I. (1639), and taken for 30 years before such presentment.

(c.)⁵ Note of fees allotted and taken in the Office of Pleas of the Exchequer for writs, entries and other proceedings, according to the ancient usage, presented and delivered up in Parliament, 21 Jac. Engrossed at the bottom are the names of Richard Beresford and the four sworn attorneys, Thos. Arden, Chas. Haines, Sam. Anderson, and David Fielder. *Endorsed*, Mr. Anderson.

(c.)⁶ Fees of the Foreign Apposer. *Signed* Charles Whitaker. *Endorsed* Mr. Whitaker.

(c.)⁷ Fees of Timothy Whitfield, Clerk of the Extracts. *Signed* Timothy Whitfield.

(c.)⁸ Fees of John Shales, Auditor of the Counties of Kent, Surrey, Sussex, Oxon, Berks, Bedford and Bucks, certified by order of the L. Chief Baron of 11 Nov. *Signed* William Cambridge, Deputy Auditor, 16 Nov.

(c.)⁹ Fees of Sir Joseph Seymour, Knt., Auditor of the Counties of Lancaster, Westmoreland, Cumberland, Salop, Stafford, Hereford, Worcester, Northampton, Rutland, Warwick and Leicester. Certified as preceding. *Signed* R. Marriott, Deputy Auditor, 16 Nov.

(c.)¹⁰ Fees of John Phelips, Auditor for London, Middlesex, Essex, Hertford, Norfolk, Suffolk, Huntingdon, and Cambridge. Certified as above. *Signed* J. Phelips, 16 Nov.

(c.)¹¹ Fees of Antony Parsons, Auditor of the Counties of Southampton, Wilts, Gloucester, Somerset, Dorset, Devon and Cornwall. Certified as above. *Signed* Antony Parsons, 15 Nov.

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- (c.)¹² Fees of Sir Charles Porter, Knt., their Majesties' Remembrancer of the First Fruits, and of his two Clerks, Robert Urwin and William Prettyman. *Endorsed* Mr. Porter.
- (c.)¹³ Fees of Michael Baker, Marshal. *Noted*: The Marshal is a Patent Officer without Salary, and many of the fees void by the taking away the Court of Wards. The profits of his office but small, considering his constant attendance by himself and De puty, on the Treasurer, Chancellor, and Barons of the Court. *Signed* Michael Baker.
- (c.)¹⁴ Fees of the Chief Usher. *Signed* John Walker.
- (c.)¹⁵ Fees of the Four Ushers. *Noted* of several officers, when they are sworn in the Exchequer or elsewhere, there is due to the four Ushers, in lieu of their robes, a fee which varies according to the quality of their offices. *Signed* Sam. Brewster, Will. Ballowe, Augustine Brewster, Walter Peirce.
- (c.)¹⁶ Fees of the Court Keeper. *Endorsed* Mr. Crew.
- (c.)¹⁷ Fees of the Clerk of the Errors in the Exchequer Chamber at Westminster. *Signed* Thomas Wearg, present officer.
- (c.)¹⁸ 17 Dec. Fees of the Clerk of the Pipe, almost identical with (c.)³ *Endorsed* as delivered in by William Whitaker, Deputy Clerk of the Pipe.
- (c.)¹⁹ 17 Dec. Fees of the Secondaries, &c. in the office of the Clerk of the Pipe. Identical with (c.)⁴ *Noted* Examined by William Wallinger 14 Dec. 1689.
- (c.)²⁰ 17 Dec. Fees of the Foreign Apposer. *Noted* Delivered and sworn to by Will. Whitaker, sworn Clerk and Deputy of Charles Whitaker, Off. For: Appr Scrij: It differs considerably from (c.)⁶
- (c.)²¹ 17 Dec. Fees of the Chamberlain's Deputies. *Signed* John Adye, Deputy.
- (c.)²² 17 Dec. List identical with (c.)⁷, but unsigned. *Endorsed* Whitfeild.
- (c.)²³ 17 Dec. Fees of the Office of Pleas. Contains two fees not mentioned in (c.)⁵ *Signed* Cha: Haines.
- (c.)²⁴ 17 Dec. Fees of the Marshal, unsigned, and omitting two fees mentioned in (c.)¹³ It contains the same Note, adding that the profits may be worth, one year with another, about 40*l*. *Endorsed* Mr. Baker.
- (c.)²⁵ 17 Dec. Fees of the Lord Treasurer's Remembrancer and the Attorneys in his office. *Memorandum*, That a great part of the business upon which several of the fees were formerly received, is ceased upon the taking away of the Court of Wards, and the writing out of press of extent for all fines, recognizances and other debts of the Crown, and drawing down on record all debts levied by the Sheriffs, and other business done *ex officio*, for which there is no fee, salary or reward either to Master or Clerks, is much more than the business for which the aforesaid fees are allowed and taken. *Signed* John Tayleure, Secondar. in officio Johannis Osborn. Barr. Rem. Thes.
- (c.)²⁶ 17 Dec. List identical with (c.)¹, but without the memorandum. *Signed* Butler Buggin.

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- (c.)²⁷ 17 Dec. List identical with (c.)², but without the memorandum.
- (c.)²⁸ 17 Dec. Fees of the Auditor of the Counties of Southampton, Wilts, Gloucester, Somerset, Devon and Cornwall, presented in pursuance of an Order of the L. Chief Baron &c. of 10 Dec. to deliver the same to the Committee on 17 Dec. *Memorandum*, That the accounts have been taken by the Officers of the Pipe. Almost identical with (c.)¹¹ *Signed* Antony Parsons, 17 Dec.
- (c.)²⁹ 17 Dec. Fees of John Potinger, Comptroller of the Pipe. *Signed* J. Potinger.
- (c.)³⁰ 17 Dec. List of the Fees of the Remembrancer and Sworn Clerks of the Office of the First Fruits. Almost identical with (c.)¹² *Signed* Rob. Urwyn. *Noted* at end of List; For other fees, which are not frequent in use in the said office, the same are to be regulated according to the use and custom as is in the other Remembrancer's Office. *Noted* outside in another hand: Be it remembered that the fees for compounding First-Fruits, which were formerly but 18/10, are now raised up to £1 6/6, and that this change was owned by Mr. Urwyn.
- (c.)³¹ 17 Dec. List identical with (c.)¹⁴, but unsigned. *Endorsed* Mr. Walker.
- (c.)³² 17 Dec. List identical with (c.)¹⁵ *Endorsed* Mr. Brewster.
- (d.) *Common Pleas*. (d.¹) to (d.¹⁷) inclusive, were probably lodged with the Clerk on 16 Nov., pursuant to Order of 9 Nov. The rest were brought in on 17 Dec., pursuant to Order of 7 Dec. (*See* Com. Book of dates.) The Lists are as follows:—
- (d.¹) Names of the several officers and offices in the Court of Common Pleas at Westminster. *Endorsed*: Mr. Thursby.
- (d.²) Ancient fees of the Custos Brevium.
- (d.³) Same of the three Protonotaries. *Noted*, The Protonotary for the Court of Monmouth has the same fees before expressed, belonging to his Office for that County.
- (d.⁴) Same of the Filazers.
- (d.⁵) Same of the Exigenters. States that the whole profits of the Exigenters anciently consisted of the fees on three writs only, viz.: on the *Exigent*, and more according to the length, 11*d.*; on the Proclamation, and more according to the length, 6*d.*, and on the *Supersedeas* 2*s.*, which fees were paid until 14 James II., who by Letters Patent about that year granted the sole making of the *Supersedeas* *quia improvide* to John Murray, Esq., then one of his Majesty's Bedchamber. The then Exigenters, after long suit and much opposition, submitted to the grant, thus losing the benefit of the writ which was the least in labour and more in profit than both the others, whereupon the then Chief Justice, Sir Henry Hobart, and the other judges of the Court, by warrant under the Privy Seal, allowed the Exigenters to take a penny more on the *Exigent*, since which there has been no farther increase of fees nor any other alteration, save only that their offices are now decayed three parts in four at least in their yearly value.

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- (*d*⁶.) Same of the Chirographers Office of Fines. *Noted*, The present officer is Francis Lane, Esq.
- (*d*⁷.) Same of the four Criers.
- (*d*⁸.) Same of the Proclamator and Marshal, as they were presented in Michaelmas Term, 15 Car. I., 1639. *Signed* John Walker.
- (*d*⁹.) Same of the Clerk of the Inrollment of Fines and Recoveries, as they have been usually taken. *Signed* E. Milles.
- (*d*¹⁰.) Same of the Utlary Office. *Signed* Charles Franklin, Clerk of the Utlaries, Deputy to the Attorney-General.
- (*d*¹¹.) Same of the office of Clerk of the Juries. Thomas Sympson, Master.
- (*d*¹².) Same of the Clerk of the Essoynes and his Clerk. *Signed* William Hall.
- (*d*¹³.) Fees of the office of *Supersedeas* to the Exigent, viz., For signing every writ 1s. 6d. For making of every ordinary writ 6d.; and if the writ exceed six lines, then for every four lines so exceeding 4d. *Signed* Philip Perry. [See also (*d*⁵.) above.]
- (*d*¹⁴.) Ancient fees of the Porter of the Court.
- (*d*¹⁵.) Same of the Court-keeper.
- (*d*¹⁶.) 16 Nov. 1689. Fees taken by the Clerk of the King's Silver, viz.—

	<i>s.</i>	<i>d.</i>
For the fees of every ordinary fine taken by the L. Chief Justice or any Judge of Assize in the Western Circuit	1	6
For every ordinary fine taken as aforesaid in any other County	0	10
For every fine taken by Special Commission, above the former rates	0	4
For every several caption in any fine where it is taken at several times by Special Commission, above the former rates	0	4
For every fine certified by a <i>Certiorari</i> after the death of any Judge or other Commissioner, over and above the former rates	0	6
For the <i>post diem</i> of every fine brought in the vacation after the return of the writ of covenant	0	6
For every search of any fine for every term	0	4
For every copy of the entry of the King's Silver	0	8
For every fee of a <i>ne recipiatur</i> of any fine either by order of Court or of any Judge	3	4
For continuing of any such order from term to term till it be dissolved	3	4
For every fine not brought in before the Essoin day of the subsequent term and for every term after	3	4

Witness my hand this 16 November 1689, Henry Ludlow.
[See also (*k*) below.]

- (*d*¹⁷.) Fees of the Warden of the Fleet Prison. Table of the ancient Fines, Commons, and Fees, as they were renewed

and established in the reign of Queen Elizabeth, and renewed and confirmed in the 19th year of Charles II. by Letters Patent under the Great Seal. Entitled: The form of the Table that shall hang in the Hall in the Fleet, viz. :—

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	An Archbishop, a Duke, a Duchess.	A Marquess, a Marchioness, an Earl, a Countess, a Viscountess.	A Lord Spiritual or Temporal. A Lady, the wife of a Baron or Lord.	A Knight, a Lady, the wife of a Knight, a Doctor of Law or Divinity, and other of like calling having 100 marks a year living.	An Esquire, a Gentleman or Gentlewoman that shall sit at the ParLOUR Commons; or any other person or persons under that degree, that shall be at the same ordinary Commons of the ParLOUR.	A Yeoman or any other that shall be at the Hall Commons, man or woman.	A poor man in the Wards that hath his part at the Box.
The Warden's fine for liberty of House and Irons at the first coming.	£ s. d. 10 0 0	£ s. d. 7 0 0	£ s. d. 5 0 0	£ s. d. 2 13 4	£ s. d. 1 6 8	£ s. d. 0 13 4	£ s. d. nil.
The first week's Commons for himself.	5 0 0	3 6 8	2 0 0	1 6 8	0 16 4	0 6 10	nil.
The Dismission -	3 5 0	2 10 0	1 13 4	0 12 0	0 7 4	0 7 4	0 7 4
The ordinary Commons weekly with wine.	3 6 8	2 0 0	1 13 4	0 18 6	0 10 0	0 5 0	nil.
The Clerk's fee for making the obligation.	0 10 0	0 7 0	0 5 0	0 2 4	0 2 4	0 2 4	nil.
The fee for entering the name and cause.	0 5 0	0 3 0	0 2 6	0 0 4	0 0 4	0 0 4	nil.
The porter's fee -	0 10 0	0 7 0	0 5 0	0 1 0	0 1 0	0 1 0	nil.
The jailor's fee -	0 10 0	0 7 0	0 5 0	0 1 0	0 1 0	0 1 0	nil.
The Chamberlain's fee	0 10 0	0 7 0	0 5 0	0 1 0	0 1 0	0 1 0	nil.
For wine -	1 0 0	0 13 4	0 10 0	One gallon of wine.	One gallon of wine.	A pottle of wine.	nil.

Note.—The Warden takes also by virtue of the said Letters Patents of every prisoner he may lawfully let go abroad with a keeper, for the half-day, ten pence; and for the whole day, twenty pence; and also of ever Parlour Commoner at the first coming 2s., and afterwards fourpence per week, and of ever Hall Commoner 1s. at first, and afterwards twopence per week for maintenance of a parson.

(*d*¹⁸.) 17 Dec. 1689. Fees payable to the Lord Chief Justice of the Common Pleas and his Clerks upon Writs of Error. *Signed* Joseph Hayne, Clerk to the L. C. Justice. [Brought in this day, pursuant to order of the 7th. Com. Book of dates.]

(*d*¹⁹.) 17 Dec. 1689. Fees payable to the Judges of the Common Pleas and their Clerks. *Signed* Joseph Hayne. [Brought in this day, pursuant to order of the 7th. Com. Book of dates.]

(*d*²⁰.) 17 Dec. 1689. Return containing (1) Names of the several officers and offices in the Court of Common Pleas at Westminster, and (2) Lists of the Fees belonging to the various officers, as follows :—

Custos Brevium.

Protonotaries. For entries of Declarations, Pleas and Judgments etc.

Ditto For making and entering of Writs etc.
Clerks of Ditto in general.

Protonotaries and their Clerks, touching Informations only.

Secondaries of Protonotaries.

Protonotaries. Other fees.

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*Filazers.

*Exigenters.

Clerk of the Inrollments of Warrants and Estreats.
Chirographer.

Clerk of the King's Silver, as follows :—

	s.	d.
For every fine taken by the L. C. Justice of the Court or any Judge of Assize	0	10
For every fine taken by a Special Commission, over and above the former rate	0	4
For every several caption of a fine in a Special Commission	0	4
For every fine of the Western Circuit, over and above the former rates	0	8
For a fine certified by <i>Certiorari</i> after the death of any Judge or Commissioners, over and above the former rates	0	6
For the <i>post terminum</i> of a fine brought in the next vacation after the return of the Writ of Covenant	0	6
For every search for every term of a fine	0	4
For the copy of the King's Silver for every sheet	0	8
For the <i>post terminum</i> of a fine brought in the next term after the return of the Writ of Covenant, and for every other term	3	4
For the fee of a <i>ne recipiatur</i> of a fine, either by order or warrant of the Courts or Judges	1	0
Clerk of the Treasury.		
Under Clerks of ditto, writing in the office.		
The Four Criers.		
Marshal, Usher and Chief Proclamator.		
Alienation Office (1) In term time (2) In Vacation.		
Clerk of the Inrollments of Fines and Recoveries.		
*Utlary Office.		
Clerk of the Juries.		
*Clerk of the Essoynes.		
*Office of <i>Supersedeas</i> to the Exigent.		
Porter. [These fees include one of four pence for a fine "if a woman be examined."]		
Keeper of the Treasury.		
Court Keeper.		
Serjeants at Law.		
Attorneys.		
Warden of the Fleet. [As in <i>d</i> ¹⁷ above.]		
Clerk of the Fleet as follows :—		

	s.	d.
For the allowance of every Writ of <i>Habeas Corpus</i> or Attachment	2	4
For the return of do.	2	4
For the return of the first Cause	4	0
For the return of every other Cause	2	0
For allowance of every <i>Supersedeas</i> or other discharge	2	4

* The list marked with an asterisk are identical with the corresponding lists above, Annexes *d*⁴, *d*⁵, *d*¹⁰, *d*¹², *d*¹³. The remainder, with the exception of some lists which appear here for the first time, contain more or less variations.

Tipstaffs, viz^t.—For safe conducting every prisoner to and from the Court and the Judge's Chambers, 5s.
Seal Office.

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Subscribed: These are the ancient fees according to the best information we can get and as we believe. William Farmery, William Petyt, Henry Clift. [Brought in this day, pursuant to order of the 7th. Com. Book of dates.]

(e.) *Chancery.*

(e.)¹ 7 Dec. 1689. Fees belonging to the Masters in Chancery and their Clerks. *Signed* Miles Cooke, S. Keck 6 Dec. 1689. *Endorsed* as brought in this day. [Delivered in this day by Sir Miles Cooke. Com. Book 7 Dec.]

(e.)² 17 Dec. Parchment List entitled: The Fees of the Register in the Court of Chancery. *Noted*, Thomas L. Jermyn, Register; George Edwards, Carew Gwydott, Edward Goldesbrough, Richard Price, Deputies. *Signed* George Edwards. [Delivered in this day by G. Edwards. Com. Book 17 Dec.]

(e.)³ 17 Dec. Parchment List entitled: The Fees of the office of Register of Affidavits in the High Court of Chancery. *Noted*, Samuel Poynter, Register. *Signed* G. Edwards. [Delivered in this day by G. Edwards. Com. Book 17 Dec.]

(e.)⁴ 17 Dec. Parchment List of the ancient fees of the Six Clerks of the Court of Chancery usually taken in the Six Clerks' office. *Noted*: There has been an allowance out of the fees above mentioned to the Under Clerks, who dispatch the business of the client in that office, and by a decree made by the late Lord Keeper Bridgeman, the then Master of the Rolls, on 18 June, 20 Car. II., the same are settled between the Six Clerks and the Under Clerks, and have been ever since observed. *Signed* Rich^d Derbyshire, Jo. Slater. [Delivered in this day by R. Derbyshire and J. Slater. Com. Book 17 Dec.]

(e.)⁵ 17 Dec. Parchment List entitled: A Particular of the usual and accustomed fees taken and received by the Clerks of the Petty Bag in Chancery for business done and transacted at law and in Equity in that office. *Noted* Aaron Pengry, John Lloyd, John Dauling, officers. *Signed* Aaron Pengry. [Delivered in this day by A. Pengry. Com. Book 17 Dec.]

(e.)⁶ 17 Dec. Parchment List of the usual and customary fees taken by the Examiners in Chancery. *Noted* Fra. Twyden, W^m Adderley, Examiners. *Signed* Will. Bamfeild. [Delivered in this day by W. Bamfeild. Com. Book 17 Dec.]

(e.)⁷ 17 Dec. Parchment List of the ancient, usual and allowed fees of the Cursitors, with the seals of the writs included. *Signed* Jo. Hungerford. [Delivered in this day by J. Hungerford. Com. Book 17 Dec.]

(f.) *Duchy of Lancaster.* Lists brought in 17 Dec. pursuant to Orders of Committee of 23 Nov. and 3 Dec. and Order of the House of 25 Nov. (Com. Book of dates, and L. J., XIV., 352.) The Lists are:—

(f.)¹ 17 Dec. Ancient fees received in the office of Cheek Gerard, Esq., Clerk of the Council of their Majesties'

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Duchy of Lancaster, for part whereof there is accountable to the Chancellor of the Duchy for the seal and the rest to the said Clerk of the Council and his Deputies. Gives the fees to the Chancellor, (*Signed* Jo. Baker,) the Clerk of the Council, Benjamin Ayloffe, Deputy Keeper of the Records, (*Signed* Ben. Ayloffe,) John Baker, Deputy Clerk or Register and Richard Husband and Thos. Assheton, the two Attorneys in Court (*Signed* Rich. Husband.) [Delivered in this day by Sir Benjamin Ayloffe. Com. Book 17 Dec.]

(f.)² 17 Dec. Fees taken in the Offices of John Fanshaw, Esq. Auditor of the North Duchy, and Tobias Le Gros, Esq., Auditor of the South Duchy of Lancaster. *Signed* Jo. Fanshawe, Tobias Le Gros. [Delivered in this day by Mr. Fanshaw. Com. Book 17 Dec.]

(g.) 23 Nov. Paper endorsed: complaints against the fees in the Courts of the Great Sessions in Wales. States that as the unreasonableness and extravagance of the fees of all the courts of law and equity in England are now under the consideration of the House, it were well for Wales that the extravagance of the fees in the courts of that country were under the same consideration, more especially since the power of the Lord President of Wales in the Court of Marches is taken down by a late Act of Parliament; * for before that Act, the Lord President and Council had power to regulate the fees of all the courts in Wales (*noted* marginally, 26 Hen. VIII. c. 27.) Orders were sent about two years ago to the officers in all the courts to attend at Ludlow with tables of their fees, but the Lord President not coming there himself, the council could not proceed to redress that grievance. Since that time the grand jury for Merionethshire in Oct. 1688 presented the extravagance of the fees of the Court of Chancery for a grievance, but no relief was given nor promised upon that presentment, nor since upon the address of the grand jury at Conway to the judges and complaints of the gentlemen of the country to them the last sessions, for that the country is out of all hopes of relief unless Parliament will consider their condition. In particular is mentioned the great vexation upon the levying of fines and suffering of recoveries, for a man may pass and compound for an estate of 1,000*l.* a year at an easier rate at the Common Pleas than that of 200*l.* in Wales; besides that of Flintshire is more reasonable than in any of the other countries. The compounders of the King's silver in North Wales are lessees to the Crown, and only pay reserved rents, for that the country is served to pay extravagant sums, and all to the compounders' pockets. Prays that the several officers of the courts of law and equity in that country may be obliged to attend with the several tables of fees, etc. [*Endorsed* as read this day. The Committee, who had been ordered by the House on 20 Nov. to extend their enquiries to the Courts of the Grand Sessions in Wales (L. J., XIV., 348), ordered the Judges of those Courts to send in lists of their officers and fees. Com. Book 23 Nov.]

(h.) King's Bench Prison. Parchment entitled, A true account of the several rates of Lodgings and other Fees taken and exacted by the Marshal of the Marshalsea of the King's Bench in South-

* See No. 80.

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wark in 1677. States, after giving particulars, relating to 53 chambers containing altogether 84 beds, that the yearly total of chamber rent in the House amounts to 1,274*l.*, the sheets come to 109*l.* 14*s.*, and the nurses to 124*l.* 16*s.*; besides which, the Marshal receives for the rent of the four cellars, empty without any stock of beer, 200*l.*; also 8*l.* out of every cellar for uttering tobacco, brandy, and bread and cheese, making 32*l.* a year; and the cook pays 20*l.* a year; making a total altogether of 1,760*l.* 10*s.* Then follows a table of fees. The Marshal is computed to receive from the 300 prisoners at large a yearly sum in weekly payments of 3,315*l.*; making his whole revenue as above amount to 5,075*l.* 10*s.*, not including action money, bribery, and gratuities. *Note:* Mr. Terry who pays the 200*l.* rent for the four cellars, lays in a stock of beer and ale and lets it out as follows: viz. He receives of the tapster for every barrel of beer drawn out 20*l.* 3*s.* 6*d.*, and for every barrel of ale 26*l.* 3*s.* 6*d.*, besides 8*l.* a year of each tapster for uttering tobacco, brandy, and bread and cheese, so that double gains thereby accrue to the Marshal and the farmer, besides the tapster reaps an advantage, which occasions ale to be sold for three-pence a short quart, or in tankards which hold not above a pint and a half, and beer the like measure for two-pence the pot. These extraordinary fees, with the entertainments every term do, with the other fees to the under officers with gratuities at their pleasure for fear of their being debarred lawful privileges of the prison if they comply not, absolutely destroy the prisoners, and consume their estates, as for example the Petitioners against the aforesaid horrid exactions are daily not only abridged of their ancient rights as prisoners, but abused and put on the common side, to lodge in vaults fit for nothing but corpses by reason of the great damp and filth which has already destroyed many, and will destroy more, if not speedily prevented. [The above, which has no date or endorsement, was found with these papers. The Com. Book of 9 Nov. has the following entry: "One grievance in the Court of King's Bench is that the Keeper of the King's Bench Prison makes oath the first day of every term that all his prisoners are within the Rules of that Court, though at the same time some of them are out of the Kingdom." But see Calendar Ninth Report, No. 506.]

(*h*¹.) Paper (found enclosed in preceding), entitled The Abuses of the House, as follows: "The Ale at three pence a quart wine measure; brandy at 8*s.* a gallon. The Rule Money 4*s.* 4*d.* for men to pay the first and last days in the term for those only in action, formerly intended for those in Execution. The turning to the Common Side, where Cooth and others have perished with their hard usage. The selling offices for money and laying a charge on the prisoners upon their first coming in, to make their places of profit to them, viz., the Deputy Marshals, the Steward, the Clerk of the Securities and Clerk of the Papers, Chamberlain and Sub-Chamberlain, and Gardener, and Turnkeys, who have Patents for their offices. Mrs. Man, abused by Mr. Moore, Turnkey, who obstructed her for bringing in provision to the prisoners. Shelterers in the Rules who are protected by the Marshal against the laws, by paying money unto him. Pray that Munday and Sturmeay may be summoned to appear before the Committee to declare what

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settlement was made by the L. C. Justice Hale and L. C. Justice Vaughan according to the power intrusted in them by the late Act of Parliament in 1671. Pray that Moon and Swanson, Potter and Rookhead, with Westlocke, Arrawaker (*sic*) [*? Harry Walker*] and Geerey, W. Turner and Salter may be summoned before your Honours.

(*h*².) Rule of Court, addressed to the Marshal, ordering him to hang up, within a week, in the Hall of the Prison a Table of the Fees due to him and his officers, which were presented in the 6th year of Charles I., and were afterwards enrolled in the Court in the 16th and 17th of Charles II. *Dated* Tuesday 5 Feb. 1677-8. *Endorsed* Rule of Court to set up a Table of Fees. [Found enclosed in (*h*) above.]

(*i*.) 19 Nov. Petition of Percival Brunsell, Gent., to the Committees for regulating the Courts of Justice, complaining of grievances, as set forth in the papers annexed to his Petition, and praying for redress. *See* two following papers; the whole is endorsed as read this day. [The Com. Book has the following: 19 Nov. A Particular of Grievances to be redressed, delivered in from Mr. Brunsell, is read. 23 Nov. A Paper, given in by Mr. Brunsell, is read and given him back again. He pretends to acquaint the Committee how the subject is grieved in Chancery. He is directed to bring in a Particular in writing of the grievances in the Court of Chancery on the 26th.]

(*i*¹.) 19 Nov. Particular of grievances, which Petitioner discovered to King Charles II., not yet redressed. 1^{stly}. That no one can practice the law in others' names without incurring the penalties of the Statute 3 Jac. I. c. 7., and whoever practices in his own name is obliged by oath and the Statute of Elizabeth to defend all just rights and privileges of the Imperial dignity, also by a more particular oath to do no wrong nor suffer any to be done without discovering the same to the King or his Ministers. 2^{ndly}. The Statute 12 Rich. II. prohibits all offices of trust to be sold or disposed of by Brokage, favour, or affection; yet most great Ministers place their relations therein or others for money. 3^{rdly}. The Judges are prohibited by oaths and the Statute of 18 Edw. III. Stat. 4 to take Fee, Robe, or Gift of any but the King, yet they take great sums of officers upon sale and administration and New Years' Gifts; robes of the City of London, and fees of private persons in suits; which increase or decrease as proceedings abate or multiply; and they and great Ministers evade the said statutes for want of a law to make officers upon admission discover whether they have promised or given anything for offices. 4^{thly}. The Judges are sworn by the Statute 1 Eliz. 4 to defend all just rights belonging to the Imperial dignity, and as the King is entrusted with the administration of justice, every office incident thereto is in the King's gift, and not anything in can issue out of the Crown without express mention by the Statute 1 Hen. IV. c. 4; and at Common Law not any can transfer greater estates in land or offices than they have therein. Yet the judges whose estates in offices terminate with them, do in their own right, convey freeholds to others to the prejudice of the King and people, the value of such offices amounting to more than 100,000*l*. 5^{thly}. Officers levy Charges amounting in the King's Bench to

10*l.*, and in the Common Pleas to 3,024*l.* under pretence of recovering a duty to the King of 6*s.* 8*d.* called a *Capias* and fine, but seldom or never account or pay any in the Common Pleas to the King. 6^{thly}. Officer for bribes pack juries, by sparing many of the principal panel, and supplying it with by-standers attending to serve base ends. 7^{thly}. Malicious informations are set on foot, and the informers escape unpunished by officers' non-observance of the Statute 18 Eliz. c. 5. 8^{thly}. Officers, by falsifying their oaths, wrong the King of many fines upon original press in actions of debt, and oppress peaceable subjects by not imposing and levying fines and amerciaments for the King upon such as by undue returns or unreasonable demands disturb others; to multiply proceedings and continuance of fees, whereby many actions are unduly delayed, especially in Chancery, where causes have pended upwards of twenty years. 9^{thly}. Officers for bribes smother presentments, &c., against notorious criminals, or discharge them upon false suggestions with easy compositions to the King. Sir Philip Mountain, High Sheriff of Yorkshire, woefully experienced it in prosecuting Mr. Benson, Clerk of Assizes, for extortion. 10^{thly}. The King has a duty on alienations being 10*l.* in all cases for every 100*l.* contained in writs of covenant and entry. The Commissioners, instead of dealing impartially, take the full from some and only part from others.

(i².) 19 Nov. Mr. Brunskell's particular Case upon the discovery of his grievances aforesaid. Contains extracts purporting to be reports and opinions of Ministers and Lawyers on his behalf. It is stated that Mr. Brunskell was once a clerk in the Rolls Chapel, and was made by Charles II. a Commissioner in the Alienation Office and Office of the Surveyor of the Greenwax fines, with a promise of further reward for his discovery, which had lost him a practice of over 300*l.* a year; that his salary had been stopped by James II., and that he had petitioned the present King to be restored to his office. His Petition had been referred to Sir G. Treby, but his right was not yet tried, and so he applies to their Lordships.

(i³.) 16 Jan. 1689-90. Petition of Percival Brunskell, Gent. Petitioner has expended or contracted debts of upwards of 4,000*l.* by the discovery of undue practices in the Courts of Justice, which his oath and duty obliged him to, and also lost his practice, which was then worth more than 300*l.* a year, by angering the then Judges and officers, and has never had anything in consideration thereof but two small offices, which Charles II. granted to him, and which were taken from him in the late ill times, and which his present Majesty more than once graciously promised to restore, and which the L. Chief Baron and the other Barons of the Exchequer reported Petitioner well experienced in and every way qualified for and fit to be restored. The said offices have been granted to others, and Petitioner and his family are ready to starve for want of subsistence. Prays their Lordships to address his Majesty to make some provision for him. *Endorsed*: Nothing done on it. [MS. 16 Jan. No entry in L. J.]

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(*k.*) 17 Jan. 1689–90. Petition of Henry Ludlow, Esq., Clerk of the King's Silver Office, to the Committee. The Puisne judges of the Court of Common Pleas have of late demanded a fee as due out of Petitioner's office every issuable term, whereas no such fee was ever until very lately paid or demanded. Petitioner conceives, for reasons annexed to his Petition (*see* next paper), that they have no right to the fee, and prays that it may be referred to the gentlemen appointed to examine the fees of the offices of the Court of Common Pleas, and that they may settle the same (notwithstanding the great power of the judges over their officers) according to right and justice. [Read this day. Com. Book Jan. 17, 21.]

(*k*¹) Reasons appended to preceding. In 31 Car. II. Petitioner was admitted by the then L. C. Justice North to his office, as his freehold for life, no word being said of any fees, to enjoy the same as Henry Nourse, his immediate predecessor, and Wm. Moorcroft and Hen. Ewer had done before him, and to receive the fees and profits as anciently paid. In 15 Car. I. a presentment of fees was given in by Ewer, then Clerk, and nothing was mentioned of any fee paid to the judges; and the jury of Attorneys and officers then upon their oaths found no such fee due out of the King's Silver Office as they did out of other offices, to wit those of the Prothonotaries, the Clerk of the Warrants, and the Clerk of the Enrolment. Nor is there any fee out of the King's Silver Office mentioned in the presentment of their own fees, as there is what is paid from the Prothonotary, Clerk of the Warrants, etc. Nor can the judges in any presentment of their own fees, show where such a fee was ever paid to them, till Mr. Nourse paid it after holding the office nearly 30 years; who, being then old and timorous and fearful of L. C. Justice North, who had then great power, and the other judges, paid it through fear but not of right; and Petitioner in the late King's reign paid it also through threats and fear.

(*k*².) 21 April 1690. Petition of Henry Ludlow, Master of the King's Silver Office, to the House. The Committee had ordered both parties to be heard on Petitioner's former Petition, but the Prorogation, and afterwards the Dissolution, prevented the hearing. Petitioner is pressed by the Judges for payment of the fee, and prays that a day may be appointed for the hearing., L. J., XIV., 469. [The Committee for Petitions, to whom this Petition was referred, ordered to report that the Petition should not be received until Ludlow had had a trial at law. (Pet. Book, 25 April. L. J., XIV., 474).]

(*k*³.) 21 April 1690. Reasons appended to preceding Petition. Identical with those in (*k*¹.)

161. Nov. 8. Long *v.* Nelthorpe.—Petition and Appeal of Nathaniel Long. Appellant in 1685, going out of town to be married, borrowed certain monies on bond from his friend, Respondent's son, to whom he gave a further bond of 400*l.*, to secure him, in case of death, against an alleged balance of 200*l.*, claimed by Nelthorpe on account of business dealings. Before Appellant's return, Nelthorpe died, leaving his father-executor, who insisted on payment of the bonds. Appellant repaid what he had actually borrowed, but in regard to the bond on account, he brought a Bill in Chancery for relief, the same having been given

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only as a security in case of death, and Appellant being willing to state accounts and pay the balance found due. The Court on 24 April 1689 ordered a trial at law on the issue whether the bond in dispute was given for money lent or for securing the money due on the balance of the said account. The jury found against Appellant, and on the Court directing a new trial, a similar verdict was returned. The Court then referred it to a Master to state what was due for interest on the said bond of 400*l*. The Master reported 252*l*. due for principal and interest and 261*l*. 3*s*. 3*d*. for costs, which the Court decreed to be paid, or the Bill to be dismissed. Appeals against this decree, and prays that Respondent may be ordered to answer. *Signed* by Appellant; *Counter-signed* Charles Porter and Thos. Filmer. [The cause never came to a hearing. On 15 Nov., on motion, on behalf of Respondent, the House appointed it to be heard on the 28th (L. J., XIV., 345); but on the 27th the House was acquainted that both parties were agreed. (MS. Min. No entry in L. J.)]

(a.) 15 Nov. Answer of James Nelthorpe, Executor of James Nelthorpe, his son, late of the city of London, merchant, deceased. Respondent, on the Appellant's refusing to pay the bond in dispute, caused an action to be brought against him, but before a trial was had, Respondent filed his bill in Chancery. The issue as to the bond was twice tried by a jury of merchants, who, after full evidence, found for Respondent. Prays that the Appeal may be dismissed with costs, as vexatious. *Signed* by Respondent; *Countersigned* Thos. Trevor.

162. Nov. 8. Countess Dowager of Winchelsea v. E. Winchelsea (Privilege).—Petition of Elizabeth, Countess Dowager of Winchelsea, Relict and Executrix of Heneage, late Earl of Winchelsea, deceased. Petitioner was left sole Executrix of her late husband, who died leaving great debts, and after the burial, she proceeded to prove the will and inventory the personal estate, and in order to depart with her family from Eastwell, in Kent, where the Earl died, she hired a house and lands. To prevent this, Lady Maidstone, with the present Earl, about 18 years old, and Mr. Leopold Finch and others illegally entered Petitioner's dwelling-house, and with one Herbert Randall, a country lawyer, forcibly took possession of deeds, &c. concerning Petitioner and her children, and of all the goods and chattels of the late Earl; and the tenants of Petitioner's jointure lands have been forbidden to pay their rents. Prays for relief. L. J., XIV., 335. [*Sam. Hoyle* (sworn). Asked if the Countess was possessed of the goods? None were taken away, but E. Winchelsea detains them. There were carts to carry them away, but my Lord would not let them. Their pretence was that they had a deed of gift and that there was an annuity not paid. My Lady claimed them by Will. The doors were padlocked up. *Thomas Dade* (sworn): The Lady demanded the goods and was refused. The Countess Dowager was in possession, and the now Lord came to the funeral and kept there since. She was in possession of the house and goods. *John Ayre* says the same. The House then decided that, as it had not been shown that the person of the Countess had been restrained, there was no breach of privilege. (*ib.* MS. Min.)]

163. Nov. 11. V. Preston.—Patent creating Richard Viscount Preston an English Peer. James II., calling to mind the great assistance and numerous services rendered to him and his brother Charles II. by his well beloved and faithful cousin and counsellor Richard Viscount Preston in the kingdom of Scotland, a Principal Secretary of State,

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seeing also that his fidelity seems to have been transmitted to him hereditarily, as his grandfather Richard Grahme of Norton Conyers in the County of York, Bart., deceased, sprang from an ancient and illustrious line, adhered most firmly to his father Charles I. in most difficult times, and could never be shaken in his allegiance by imminent dangers to his life or wasting of his ample patrimony; and moreover thinking that the brothers of the said Viscount, who have always been faithful to his Crown, should be honoured by a token of his royal goodwill, so that he might at least in the grandsons reward the deserts of the grandfather, creates Richard V. Preston Baron of Liddall in the County of Cumberland, and Viscount Preston in Amounderness in the County of Lancaster, with remainder, failing heirs male of his body, to his brothers, James, Fergus, William, and Rainald Grahme successively and their heirs male. And as higher rank necessitates increased expenses and greater burdens, and to the end that the aforesaid Richard, James, Fergus, William, Rainald and their heirs males respectively might the better and more fitly and honorably maintain and keep up the rank of Viscount Preston in Amounderness in the County of Lancaster, the king grants them a yearly rent of 20 marks English out of his Exchequer. The king further wills that the Patent or its enrolment shall be sufficient and effectual in law, without any of the due and customary investitures, rites and ceremonies, which for certain reasons, best known to himself, he has not been able to fulfil and administer in due manner, and that it be sealed with the Great Seal without fine or fee, great or small. *Dated* apud fanum Sancti Germani ad Layam, 21^o Januarii, Stilo veteri, anno regni nostro quarto. [Brought in this day by V. Preston, who founded thereupon a claim of Privilege of Peerage in his suit against E. Mountagu, L. J., XIV., 337. The MS. Min. have the following:—On 9 Nov., House moved on behalf of the E. Mountagu that he having a suit with the L. Preston, the L. Preston has given his Attorneys and Solicitors warning, and says he is a Peer of the Realm, and insists upon his privilege. It was declared that L. Lucas told E. Mountagu from L. Preston that he was a Peer of the Realm. Then L. Preston was ordered to appear, as in L. J., XIV., 336.—On 11 Nov., L. Preston appeared, and was told he claims the privilege of a Peer. The House desires to be informed. He says there is a suit between him and L. Mountagu, and his Lordship held him to special bail. He was given an order for an appearance. He has a Patent at the door of the late King's, before the vote of the abdication passed, and he thinks he has the privilege of a Peer. He withdrew. Ordered that the Patent be sent for. It was brought to the Table. The date read. The preamble to the Patent read. Then V. Preston ordered into custody, &c. as in L. J., XIV., 337.—On 12 Nov., the Judges were heard. *Holt, C. J.*: The case is this. The L. Preston, since King James departed, obtained a Patent to create him a Peer, supposed to be under the Great Seal, and in the 4th of King James. If the question be whether this a good Patent, if King James was king, then it was a good patent; if not, it is no better than from the French king. If [the question be as] to the offence, it is an offence against this House. A man publishing such a Patent and owning it, is a great misdemeanour, and asserting the right of King James, this is a great misdemeanour. *Pollexfen, C. J.*: Whether this be a Patent under the Great Seal of England we cannot tell; and if not, it is a counterfeit of the Great Seal, and that is Treason. Suppose it were really under the right Seal, yet it being after that time he ceased to be king, this is a great offence. I think it will not amount to treason; but a great misdemeanour. It sets up that King James was king, as the Patent [is] dated. *Dolben, J.*: I

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think it is an offence very near treason to take a Patent from another person than King William and Queen Mary. It is owing another king, and so near treason. *Gregory, J.*: All acts done by King James after his leaving the Government are void. As to the offence, it is a great one to own King James II. As to what is the offence, as claiming a Peerage and no title, that is under your Lordships' consideration. I think it will not amount to treason, being done between the time; it is as near treason as may be. *Lechmere, B.*: It is a great case, and a new one. In the interval the Act is done when no King declared. According to our constitution, there is no interregnum. I cannot think it to be Treason. It must be against the Crown and dignity. And [as to the] misdemeanour, it is an affront to this House. *Rokeby, J.*: There are two things in this. This Patent cannot pretend at all to be a good Patent, and is wholly void. I cannot apprehend it Treason, but a very great offence to this House and Government. *Eyre, J.*: I am of opinion it is a void Patent. The publishing is not Treason, but is a great misdemeanour. *Ventris, J.*: I think it is not a good Patent, but void; and all King James' acts since 11 Dec. are declared void. It is a very great misdemeanour, but not Treason. *Turton, B.*: I concur with my brethren that have spoken before me. The Patent is void. What offence it is against this House, your Lordships may judge. After debate, questions proposed to be put to the Judges (1) Whether setting up the authority of a king that has no right to it is not Treason? (2) Whether owning and abetting foreign power is not Treason? (3) Whether counterfeiting the Broad Seal be not Treason? (4) About the interregnum [to be] explained. (5) Whether there cannot be Treason in an interregnum against the people or state? After debate upon the validity of L. Preston's pretended Patent, the House *nem. con.* declared it void, and committed L. Preston to the Tower, to be prosecuted for a misdemeanour. L. J., XIV., 338. MS. Min., Nov. 10, 11, 12.]

Annexed:—

- (a.) 27 Nov. Petition of Richard, Lord Viscount Preston, of the kingdom of Scotland, praying to be discharged from his confinement in the Tower. L. J., XIV., 354. [A Petition presented on 26th was read and withdrawn. MS. Min.]

164. Nov. 12. Mutiny Act (2 Will. & M. Sess. 2. c. 6.)—Amended draft of an Act for punishing officers or soldiers who shall mutiny or desert their Majesties service, *and for punishing false musters*. The text of the Bill is set out below so far as to show the Lords' Amendments* made in Committee (Com. Book 13 Nov.).

Clause 1 of Bill.

. . . . And whereas it is judged necessary that during this time of danger [several of the forces which are now on foot] *a reasonable force* should be continued [and others raised] for the safety of the Kingdom, for the common defence of the Protestant Religion and

Sect. i. of Act.

* The Lords' Amendments in Committee (Com. Book 13 Nov.) appear in the first column, which shows the Bill as sent to the Commons, the omissions being marked by square brackets, the additions by italics. The Commons' Amendments are shown by the words of the Act in the second column, and by the Clauses in the Act not found in the first column, for which see also C. J., X., 309, 313-4, 316.

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for the reducing of Ireland; And whereas no man may be forejudged of life or [tried] limb or subjected to any kind of punishment by martial law.

. . . requisite for retaining such forces.

. . . Be it enacted . . . that from and after the [ninth] twentieth day of November in the year of our Lord one thousand, six hundred, eighty-nine, every person . . . who shall at any time before the twentieth day of November in the year of our Lord one thousand, six hundred and ninety excite, cause or join in any mutiny or sedition in the army,* or shall desert their Majesties' service in the army, or being a soldier actually listed in any regiment, troop or company, shall list himself into any other regiment, troop or company without a discharge produced in writing from the captain of the troop or company wherein he is first listed, shall suffer death or such other punishment as by a Court-martial shall be inflicted.

Clause 2.

. . . any Lieutenant-Generals or other officers.

Clause 3.

. . . no Court-martial . . . shall consist of fewer than thirteen, whereof none to be under the degree of a Commission Officer, and the President of such Court-martial not to be under the degree of a Field Officer or the then Commander-in-Chief of the Garrison, where the offender shall be tried.

Clause 4.

Provided always that no Field Officer be tried by other than Field Officers, and that such Court-martial shall have power and authority to administer an oath to any witness in order to the examination or trial of the offences aforesaid.

Clause 5.

Clause 6.

Clause 7.

Provided also that this Act shall continue and be in force until the said twentieth day of November in the said year of our Lord one thousand, six hundred [eighty-nine] and ninety, and no longer.

. . . and for the entire reducing of Ireland, and for the carrying on the war against France; And whereas . . .

. . . requisite for the retaining such forces.

. . . Be it enacted . . . that from and after the twentieth day of December in the year of our Lord one thousand, six hundred and ninety, every person . . . who shall at any time before the twentieth day of December in the year of our Lord one thousand, six hundred, ninety-one, excite, cause or join . . . service in the army, shall suffer death or such other punishment as by a Court-martial shall be inflicted, or being a soldier actually listed . . . from the captain or the officer commanding the troop or company in which he last served as a listed soldier, shall suffer death or such other punishment as by a Court-martial shall be inflicted.

Sect. ii.

. . . any Lieutenant-General or other officers.

Sect. iii.

Sect. iv.

Provided always that no Field Officer shall be tried by any officer under the degree of a Captain, and that
. . . aforesaid.

Sect. v.

Sect. vi.

Sect. vii.

Provided until the said twentieth day of December in the year of our Lord one thousand, six hundred, ninety one and no longer.

* The Com. Book has an amendment to insert here, at l. 13 of the draft, a clause, probably the words that follow in italics. The amendment is struck through; but the words in italics appear twice in this Act, apparently by an error in the En-grossment.

Clause 8.

Provided that in all trials every Officer shall take an Oath upon the Evangelists before the Court [who shall] and *the next Justice of the Peace, Judge Advocate or his Deputy or one of them*, are hereby respectively authorized to administer the same.

. . . the judgment shall pass by the concurrence of the greater part of them so sworn, *which major part shall not be less than nine.*

Sect. viii.

Clause 9.

. . . upon pretence of sickness.

. . . every such person so making, giving or procuring such certificate shall forfeit for every such offence the sum of *fifty pounds, and shall be forthwith cashiered and displaced from such his office, and shall be thereby utterly disabled to have or hold any military place or employment within this Kingdom or in their Majesties' service.*

Sect. ix.

. . . upon a pretence of sickness.

Clause 10.

And be it further enacted that [as well] every officer, that shall make any false or untrue muster *of man or horse*, [as] and every Commissary, Muster Master and other Officer that shall *wittingly or knowingly allow or sign* the Muster roll, upon proof thereof, upon Oath made by *two* witnesses before [any General Field Officer (who) *a Court-martial to be thereupon called* (which is hereby authorized and required to administer such Oath) shall for such their offence be forthwith cashiered, and shall likewise forfeit the sum of *fifty pounds.*

Sect. x.

Clause 11. *Noted, To be left out.* [Provided nevertheless, and it shall and may be lawful for any person so cashiered and displaced within (blank) months next after such displacing to appeal from such General Field Officer unto the next Council of War, to be held after such his displacing, who are hereby authorized and required to hear and determine the said appeal, and either to confirm the sentence given by such General Field Officer, or otherwise reverse the same, and restore the person so displaced to his office or place, as they shall see just cause.]

Clause [12] 11.

And be it further enacted that every Commissary or Muster Master [or other], upon any Muster or offered to be made; And that [as well] every such Commissary or Muster Master [or other] making or taking such Muster, that shall neglect to give such notice as aforesaid, or shall refuse to take the aid and assistance of such Mayor, Chief Magistrate or Officer, where the soldiers so to be mustered shall be

Sect. xi.

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quartered, [as also every such Mayor, Chief Magistrate or Officer, neglecting to give his or their attendance at any such muster upon due notice as aforesaid, or refusing to assist for the discovering any false or untrue muster there made or offered] shall forfeit the sum of *fifty pounds and be discharged from his office.*

Clause [13] 12.

And also be it further enacted that if any person shall be falsely mustered every such person, if no soldier, upon proof thereof made upon oath by *two witnesses* upon certificate thereof in writing, under the hand of the Officer commanding-in-chief at the Muster, or of the Commissary of the Musters or *any other person* made to such Justice of the Peace, the said Justice is thereupon, and is hereby authorized and required to commit such offender to the House of Correction, there to remain for the space of *three months*, and to be kept at hard labour with convenient correction; *And if such person shall wittingly or willingly lend or furnish a horse to be mustered, which shall not truly belong to the trooper or troop so mustered, the said horse so falsely mustered shall be forfeited to the Informer, if the same doth belong to the person lending or furnishing the said horse, or otherwise the person lending or furnishing the said horse shall forfeit the sum of twenty pounds, upon oath made by two witnesses before the next Justice of the Peace, or be committed to the House of Correction for six months, unless he shall pay the same, there to be kept at hard labour.*

Clause [14] 13.

And be it also further enacted that [one moiety of all the said forfeitures shall be to their Majesties, their heirs and successors, and the other moiety thereof] *the said forfeitures shall be to such person or persons that shall [or will sue for the same within next after any such offence committed in any of their Majesties' Courts of Record at Westminster by action of Debt, Bill, Plaint or Information, wherein Costs of suit shall be allowed, to the informer or prosecutor, and taxed and recovered as costs in other personal actions are, and in such suits for any of the said forfeitures no protection, privilege, essoine, or wager of law shall be allowed] inform**
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. . . . from his office; And no Muster Roll shall be allowed unless the same be signed by such Mayor or other Chief Magistrate or Officer respectively.

Sect. xii.

. . . every such person, upon proof thereof, made . . .
. . . under the hand of the Commissary of the Musters or Chief Magistrate as aforesaid.

. . . for the space of ten days, and to have his ear cut off by the Gaoler or Keeper of such House of Correction. And if any person shall wittingly . . .

. . . before the next Justice of the Peace. (End of Section).

Sect. xiii.

* Here it is noted to add the Clauses B, C, and D, for which see Annexes (a), (b), and (c).

[Read 1^a, 2^a, and committed this day. (L. J., XIV., 339.) The Commons' amendments were agreed to by the Lords, and the Bill received the Royal Assent on 23 Dec. (*ib.*, 395, 397.)]

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Annexed :—

- (a.) 13 Nov. 1689. Amended Clause, marked B. continuing the amendment in Clause [14] 13, from the word ("*inform*"), and making that clause identical with the Act, with the exception of the words added by the Commons, vizt. :—"And if such Officer so offending shall have no goods, that then he shall be sent to the Common gaol, there to remain without bail or mainprize for the space of six months." [Added this day in Committee. Com. Book.]
- (b.) 13 Nov. 1689. Amended Clause marked C. Agrees, as amended, with § xiv. of the Act, except in the particulars noted. The Clause is as follows :—"And be it further enacted, that if any paymaster, agent or clerk of any regiment, troop or company, shall* detain or withhold *by the space of one month* the pay of any officer or soldier, *clothes and all other just allowances being deducted*, after such pay shall [become due] *be by him or them received*, or any officer having received their soldiers' pay, shall refuse to pay each respective common soldier their respective pay when it shall become due, that upon proof thereof before a Court-martial, as aforesaid, every such paymaster, agent, clerk and officer so offending *shall be discharged from his employment and* shall forfeit to the informer, upon conviction before the said Court-martial, *an hundred* pounds, to be raised as aforesaid,† and the informer, *if a soldier*, if he demands it, shall be and is hereby discharged of any further service, anything in this Act contained to the contrary notwithstanding. [Added this day in Committee. Com. Book.]
- (c.) 13 Nov. 1689. Amended Clause marked D. Agrees with § xxi. of the Act. The Amendment is to add the words ("by the Commissary or Muster Master before such Muster shall be made"). [Added this day in Committee. Com. Book.]

165. Nov. 12. Goodridge *v.* Crossman.—Petition and Appeal of William Goodridge, late inhabitant of Banwell, in the county of Somerset, and now a prisoner in the Fleet. Petitioner, after 13 years' imprisonment for not appearing and answering Respondent's Bill in the Exchequer for non-payment of small tithes, had another Bill exhibited against him by Respondent in 1687 for twelve years' tithes during his imprisonment, alleged to amount, at 6*l.* 10*s.* per annum, to 78*l.* In 1688 the Court decreed against him *pro confesso*, the Petitioner being unable, from conscientious scruples, to answer the Bill on oath, and ordered his estate to be sequestered. The Commissioners of Sequestration levied goods to the value of 150*l.*, which by a further Order of the Court they were empowered to sell, and for further satisfaction of Respondent, to receive the rents and profits of Petitioner's real estate, being well worth 60*l.* a year, and the real value of the small tithes during the

* The Commons added here the word "wilfully."

† The Commons added here the following ("and shall be thereby utterly disabled to have or hold any civil or military office or employment within this Kingdom or in their Majesties' Service.")

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12 years not more than 40s., one year with another. In 1689, on motion by Petitioner's Counsel, the Court ordered Respondent to show cause why the matters in difference should not be referred to Baron Lechmere, to settle moderate values of the tithes in question, but Respondent, insisting on the decree, was left at liberty to proceed thereon, and the Sheriffs gave the Sequestrators possession not only of Petitioner's estate but of the goods of two of his tenants, Thomas Avery and Arthur Thomas, and Respondent has since caused one Edward Rogers to be arrested at his suit, on pretence that Rogers also had some of Petitioner's money in his hands. Appeals against the decree and sequestration as illegal and oppressive. *Signed* by Appellant; *Countersigned* Will. Williams. [The Cause was heard on 10 Dec. *Mr. Phipps* (for Appellant): About fifteen years ago there was a bill exhibited against the Appellant for small tithes. There is no decree, nor any law to charge him with this decree. *Sir William Williams* (for Appellant): That a decree of the Court should make this a debt is very new. The man not answering, it was taken *pro confesso*. The Court ought to have set the value. This is an erroneous proceeding. A sequestration, as this, to take all his personal estate and sell it is, I think, an irregular thing. His person was put in prison and his personal estate taken and sold. *Sir Charles Porter* (for Respondent): This is the first Appeal of this nature in the world. We had an attachment. Witnesses there can be none. We have spent in prosecution 60*l*. We have received nothing these 15 years from the best living in the parish. *Sir Robert Sawyer* (for Respondent): I take this as an experiment to try whether your Lordships will allow them to answer without oath. Instances several cases of the claim made, of great estates seized. There never was 12*l*. received. There is no such thing as seizing and selling, but to secure, and then the Court orders the sale upon motion. An answer without oath is nothing. The law allows us his oath. After a reply, the Speaker reported, and the House dismissed the Appeal as in L. J., XIV., 366. (MS. Min., 10 Dec.)]

Annexed:—

- (a.) 28 Nov. Answer of James Crossman, Vicar of Banwell, in the County of Somerset. The decree complained of was made according to ancient usage and justice. The Court's requiring Respondent to make oath of the value of the tithes was *ex abundanti* and done in favour of Appellant. Prays that the Appeal may be dismissed with costs as unnecessary and unreasonable. *Signed* by Respondent; *Countersigned* R. Sawyer.
- (b.) 14 Dec. Petition of Appellant. Prays to be discharged from his long imprisonment, which is ruining himself and family. *Endorsed*. Ordered to be discharged as to his person. L. J., XIV., 371.

166. Nov. 12. Beake v. Berney.—Petition and Appeal of Elizabeth Beake, an infant of about the age of 16 years, daughter and executrix of Samuel Beake, late of London, merchant, deceased, by Abraham Beake and John Cranenburgh, her next friends and administrators of Petitioner's said father during Petitioner's minority, and of the said Abraham Beake and John Cranenburgh. The late Samuel Beake, at the request of Richard Berney, then 27 years old, agreed to sell him a parcel of French wines, worth 720*l*., in return for a statute for 1,440*l*. to be void on payment of that sum twenty days after the death of Berney's father, who was then living and in good health. Thirteen months afterwards Berney's father happened to die, but Berney, instead of paying

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the sum due, brought a Bill in Chancery to be relieved against the statute and to compel Beake to receive his principal only. The L. Chancellor Nottingham, although there was no evidence of any fraud or surprise, decreed Beake to acknowledge satisfaction and deliver up the statute on receipt of 720*l*. The L. Keeper Guildford, on a rehearing, ordered Berney to pay the full amount of the statute, less what he had already paid under the previous order. Berney paid accordingly, but afterwards, on the Lord Keeper's dying, brought a Bill of Review against Petitioners, and the L. Chancellor Jeffreys, on 27 Oct. 2 Jac. II., reversed the Lord Keeper's decree and confirmed that of L. Nottingham. Prays that Respondent may be ordered to answer. Signed by Appellants; Countersigned Ambrose Phillippis and W. Williams. [The Cause was heard on 21 Dec. *Sir Ambrose Phillippis* (for Appellant): The father was 55 and the son 27. The son had a plentiful allowance from his father; he fell acquainted with Mr. Stistead. He could not pay 720*l*. down for the wine, and proposed the statute for 1,440*l*. on his father's death. L. Nottingham had doubts in the cause. It is a contract made pursuant to an Act; there is no surprise. *Sir William Williams* (for Appellant): The wines were worth 750*l*. Is it at the will of a Chancellor to give one rule in one case and another in the same case? The son had no estate settled on him. *Sir George Hutchins* (for Respondent): A hundred decrees in Chancery of the like case depend on this. A private gentleman to buy 20 tun of wine not for his own family. I hope your Lordships will not uphold these proceedings. Mr. Berney, senior, was near 60. This bargain in its own nature is void. Mr. Sands made 13 bargains. A bill was exhibited and the Court decreed them the principal money and relieved against the 13 demands; and through all times this has been relieved. L. North reheard the cause, he not having been above two months in the Chancery. *Tryson's* cause came on presently after. In the case of *Smith v. Coleby* the L. North did it, and your Lordships affirmed. *Mr. Finch* (for Respondent): This case is not new: it is in Queen Elizabeth's time. They desire your Lordships to make a law for cheating. The Speaker then reported, and the House dismissed the Appeal. MS. Min., 21 Dec. L. J., XIV., 395.]

Annexed:—

(a.) 3 Dec. Answer of Richard Berney, Esq. Prays that the decree complained of may be affirmed, so that relief may be given in all cases, as has been done in Chancery for above a hundred years past, which if not done, will tend to the ruin of many great families and encourage young heirs to be disobedient to their parents and guardians and spend their estates before they come to them, and much administer to luxury and intemperance. Signed by Respondent. *Geo. Hutchins'* signature is copied.

167. Nov. 12. *Underwood v. Canham*.—Petition and Appeal of Mary Underwood and others. Petitioner Mary's late husband on his death-bed entrusted Respondent to manage his personal estate, worth about 4,000*l*., for the benefit of his widow and four small children during their minority, and died making no other will. The Respondent undertook the trust and, letters of administration being taken out in the Petitioner Mary's name, made an inventory of the estate and managed it by himself and Agents, but after putting out 800*l*. at interest for the benefit of Petitioners, converted the rest to his own use, and refused to give any further accounts, pretending that he was illiterate and acted only as a friend and not as a trustee. Petitioners having brought their Bill in

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Chancery, the Lords Commissioners on 3 July 1689 decreed Respondent to account but ordered that he should be answerable only for what he could not discharge himself by his own oath. Prays that this decree may be rectified and that Respondent may not be allowed to discharge himself otherwise than by proof of payments and disbursements. *Signed* by Appellant (her mark); *Countersigned* Charles Porter and W. Hancocke. L. J., XIV., 389. [On 18 Dec. Counsel being called in, and Counsel not being ready for the Appellant, they withdraw. After a long time staying, Counsel called in again, and no Counsel appearing for the Appellant, they withdraw. Underwood sent for to the Bar. Says he has feed his Counsel and they withdrew. They promised him to be here by 11 o'clock. *Ordered*, That the Counsel for the Appellant do pay 10*l.* costs to the Respondent, and that until the said money is paid, they shall not be heard at the Bar as Counsel for the future.* The Appellant called in again, and being sworn, states that he is the Appellant. He withdraws. Counsel being come, *Ordered* that the Counsel be reprimanded by the Speaker; which was done. *Sir William Williams* (for Appellants): Reads the decretal part of the Order. The accounts are from the year 1667. *Sir Charles Porter* (for Appellants): The Court has decreed them to make an account, and they are infants. Such a decree as this was never made. *Sir Ambrose Phillipps* (for Respondent): The last dealing we had was in 1676. My client borrowed 150*l.* and has paid 140*l.* *Sir William Whitelocke* (for Respondent): The Court has done what is just and fit to do. The Speaker then reported, and the House dismissed the Appeal. MS. Min., 18 Dec. L. J., XIV., 375.]

Annexed:—

- (a.) 22 Nov. Petition of Respondent. Petitioner who lives in Suffolk, fifty miles from London, and is ancient and lately come to town, prays for a week's further time to answer. L. J., XIV., 350.
- (b.) 30 Nov. Answer of Daniel Canham. Respondent knows nothing of the particulars or value of the late Underwood's estate, nor whether a will was made, nor did he ever take any inventory, nor was he ever desired or entrusted by Underwood to manage his estate. He undertook no trust, but simply out of kindness to his friend's widow and children, gave her the best advice he could, at her request, as to putting out some monies arising out of the estate, and never made any benefit to himself. The Petitioner Mary, as Administratrix, had the sole right in law of managing the estate. About 800*l.* was put out for her use and benefit at interest on several securities in the names of the said Mary and Respondent, or one of them, all which monies have been paid to Appellants or to their use. Respondent never converted any of the late John Underwood's estate to his own use, but gave accounts at all times to the said Mary, who always expressed herself satisfied until about a year since, when she brought a bill in Chancery at the instigation of her sons and others. Respondent, being an illiterate man and not concerned in any trust, kept no account of the several transactions. The intestate died 22 or 23 years ago, and the Appellants have long come to the full possession of the estate, all except 10*l.* out of a

* This order is struck through.

sum of 150*l.* which Respondent borrowed of the Appellant Mary. Prays that the Appeal may be dismissed. *Signed* by Respondent (by his mark); *Countersigned* Jas. Stedman and William Martyn.

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(c.) 9 Dec. Petition of Mary Underwood, widow, and of her four sons, Appellants. Pray for a speedy day for hearing. *Noted* in margin: The Appellants are willing to enter into recognizance to pay costs as the House shall think fit, and the Petitioner desires he may be permitted to enter into recognizance for his mother, who is in the country. L. J., XIV., 365.

(d.) 1 April 1690. Petition of Mary Underwood and others. States that the hearing of Counsel on 18 Dec. 1689 was a short one; no proofs were read nor was the cause half opened, Counsel having been more than an hour late in appearing, and thus having overtaxed their Lordships' patience. To allow the Respondent to discharge himself by his own oath is to make him a witness in his own cause; and moreover, it can be proved that his answer upon oath is false. Pray that the Appeal may be reheard. *Signed* Mary Underwood (by her mark); *Countersigned* W. Hancocke. A marginal note in the Clerk's hand states "Prescot, Solicitor." [Read and dismissed this day by the Committee for Petitions, "the cause having been already fully heard at the Bar." Pet. Book. No entry of any proceedings in L. J., or MS. Min.]

168. Nov. 14. Writ of Summons (L. Stawell).—Writ of Summons, dated this day, to John Stawell de Sommerton, Chr. [Took his seat this day. L. J., XIV., 341.]

169. Nov. 15. Cambridge, Norton.—Petition of Norton Cambridge, in the behalf of Commissary John Shales. Complains of an ejectment, and prays for relief. L. J., XIV., 343. No entry of proceedings in Priv. Book.

170. Nov. 16. Writ of Summons (E. Denbigh).—Writ of Summons, dated 14 Nov. to Basil, E. Denbigh. [Took his seat this day. L. J., XIV., 344.]

171. Nov. 19. Triennial Act Revival Bill.—Draft of an Act for reviving a former Act made in the sixteenth year of King Charles the First, intituled An Act for preventing of Inconveniences happening by the long intermission of Parliaments. "Be it Enacted by the King and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, That the Statute made in the sixteenth year of the reign of his late Majesty King Charles the Second, intituled, An Act for the Assembling and holding of Parliaments once in three years at the least, and for the repeal of an Act intituled An Act for preventing of Inconveniences happening by the long intermission of Parliaments, shall from and after the end and dissolution of this present Parliament stand and be repealed and void, and that the said Act hereby repealed shall from hence stand and be as if the said Act of Repeal never had been had or made." [On 18 Nov. in Committee of the whole House on the Bill of Rights (No. 174) the Triennial Act of 16 Car. I. c. 1 was read, then that for its repeal, of 16 Car. II. c. 1, and it was ordered to report that the Judges draw a Bill apart upon the

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debate of the House for the triennial Parliament, and the House ordered accordingly (MS. Min., L. J., XIV., 345). The above Bill was brought in this day in pursuance of this order, by L. C. Justice Pollexfen, and read 1^a (*ib.* 346, MS. Min.). It was considered first in C. W. H. on 5 Dec., E. Mulgrave in the Chair, when, after reading it through, and also the Triennial Act, the Committee reported progress (L. J., XIV., 362; MS. Min., 5 Dec.). On 7 Dec., the Committee, after reading the preamble of the Bill and the first paragraph of the Triennial Act, reported that they find it very difficult and are of opinion that a new Bill be brought in for the ends of this Bill. Ordered accordingly as in L. J., XIV., 364 (MS. Min., 7 Dec.). On 9 Dec. the House went into Committee (E. Mulgrave in the Chair) to prepare heads for a Triennial Bill. The Order read for Heads. Heads proposed for a Bill: That there shall be a new Parliament at least once in three years. That the preamble to the former Bill shall be the preamble to the new. The preamble read. E. Not[tingham] drew a preamble and read the same, and the clerk read it. House resumed (MS. Min., L. J., XIV., 365). Another Bill was brought in on 17 Dec. See No. 191.]

172. Nov. 20. *Pelham v. Cloudesley and others*.—Petition and Appeal of Charles Pelham, Esq., complaining of a decree of the L. Chancellor Jeffreys of 19 Nov. 1686, making the real property of the late Thomas Deane, which he had devised by will to George Pelham, liable, as well as his personal property, to the payment of the debts claimed by the Respondents, his pretended creditors. George Pelham having died in 1686, the decree was revived against Petitioner, his heir and executor. Prays that Respondents may be ordered to answer. Signed by Appellant; Countersigned Geo. Hutchins, Will. Williams and Edward Hildyard. L. J., XIV. 348. [The Appeal was heard and dismissed on 16 Dec. (*ib.* 372). *Serjeant Hutchins* and *Sir William Williams* appeared for Appellant; *Serjeant Phillipps* for the Respondents; *Sir Charles Porter* for the unsatisfied creditors; and *Mr. Ward* for the satisfied creditors. (MS. Min.)]

Annexed:—

(a.) 2 Dec. Answer of Paul Cloudesley, William Sharrard, Richard Cooper, Adam Cooke, Robert Foster, John Powling and Samuel Sale. The real estate of the testator, whose debts amounted to about 10,000*l.*, was of very small value, but his real estate was worth about 12,000*l.* or 14,000*l.* Appellant, on having notice of the Bill of Revivor, agreed with these Respondents to pay them their principal debts with interest for the bond debts, on their forgiving the costs of the suits, and these Respondents were paid accordingly, and the Court, on motion, dismissed the Bill of Revivor against them, without prejudice to the rest of the creditors, who were still unpaid. Pray that the Appeal, as against these Respondents, may be dismissed with costs. Signed by Respondents; Countersigned Ambrose Phillipps. Endorsed as brought in this day.

(b.) 3 Dec. 1689. Answer of Robert Clarkson, Esq., and Robert Greenway, Gent. These Respondents, being unsatisfied creditors, were by orders of the Court admitted to the benefit of the decree, and their debts were duly settled and reported by the Master. George Pelham was no kinsman of the testator, but was simply a trustee for payment of his debts, as Appellant has admitted by voluntarily satisfying the other creditors, and himself bidding

as a purchaser of the testator's real estate. A great part of the debt pretended to be due from the said estate to George Pelham was secured by mortgage. Pray that the Appeal may be dismissed with costs. *Signed by Respondents; Countersigned Ambrose Philipps. Endorsed as brought in this day.*

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173. Nov. 21. V. Hereford's Act. Draft of an Act for the enabling Edward, Viscount Hereford to settle a jointure on his marriage with Elizabeth Norborne, notwithstanding his minority. [Read 1^a this day; Royal Assent 23 Dec., L. J., XIV., 348, 397. 1 W. & M., Sess. 2. c. 7 in Long Calendar. See also Com. Book, 3 Dec.]

Annexed:—

(a.) $\frac{4}{7}$ Dec. Extract from Journal of the entries on these days with reference to L. Montagu's objection to the Act, and its withdrawal. L. J., XIV., 360, 364. *In extenso.*

174. Nov. 23. Succession to the Crown &c. Act. (Bill of Rights.) Parchment Clause as follows:—And be it further enacted by the authority aforesaid That all pardons upon any impeachment of the House of Commons are hereby declared to be null and void, except it be with the consent of both Houses of Parliament. L. J., XIV., 351. *In extenso.* [Offered this day as a Rider to the Bill on Third Reading, and after having been read three times, the Judges were heard to this question, Whether any person that has the King's pardon can plead it in bar of an impeachment. *Holt, C. J.*: I think your Lordships are the only Judges in this case. If I should give my opinion in this case, I desire to be excused. The King can pardon everything, but by Act of Parliament forbid before us. I desire to be excused. *Question* asked, Whether the King can pardon where the prosecution is not in the King's name? *Answer*, I can say nothing to this. It is properly before the Parliament. *Pollexfen, C. J.*: I think it is not proper for us to answer in. We are under rules, and tied up to the law; but here, in this Court, the People say it is their suit, and we think it improper for us. *Eyre, J.*: Of the same opinion. Our books are wholly silent in this matter. It does properly concern the Privileges of this House. After long debate the Rider was then rejected. (MS. Min., 23 Nov.)

The Bill was brought from the Commons and read 1^a on 6 Nov. (L. J., XIV., 332). It is substantially a revival of the dropped Bill of the previous Session, which was left with the Commons. As to these two Bills, the information given in the Journals and Grey's Debates is supplemented by the MS. Minutes and Com. Book as follows:—

The first Bill was brought from the Commons, 9 May (L. J., XIV., 206), and returned to them on the 25th (*ib.* 219) with the four following Amendments (C. J., X., 187), viz.:—

(1.) After (Majesty) add (and for default of such issue, to the Princess Sophia, Princess Electoral Palatine, and Duchess of Brunswick, Luneburgh, and Hanover, as being the next Protestant in the lineal succession of the Royal Family, and to the heirs of her body).

(2.) After (Religion) add (or shall marry a Papist, or one who shall refuse to make, repeat, and subscribe the following Declaration, and receive the Sacrament according to the usage of the Church of England).

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(3.) After (dead) add the clause A*, viz.: "And be it further enacted, by the authority aforesaid, That [in case of default of issue of the bodies of their Majesties, and of the issue of the Queen, the Princess Anne of Denmark, and the King, the next succeeding King or Queen shall solemnly make, repeat, and subscribe the Declaration] *the Declaration above-mentioned, to be made, repeated, and subscribed by every succeeding King and Queen of his Realm, shall be in these words following, viz.:*† [and shall also, if of the age of 14 years, receive the Sacrament according to the usage of the Church of England, before such succeeding King or Queen shall be proclaimed; and in case such succeeding King or Queen shall happen to be beyond the seas, the said Declaration shall be tendered to him or her by Commissioners sent from the Council in being at the last demise of the King or Queen, or Princess Anne of Denmark or the issue of their bodies; and upon refusal to make, repeat, and subscribe the said Declaration by the succeeding King or Queen as aforesaid, such King or Queen so refusing shall be incapable of being, and shall cease to be King or Queen, or to have or exercise any regal power in England, Ireland, or the dominions thereunto belonging; and the next heir, being a Protestant, shall succeed to the Crown, as if such person, so refusing, were naturally dead; and from and after his or her receiving the Sacrament, and making, repeating, and subscribing the said Declaration, which shall be tendered as aforesaid, shall be proclaimed King or Queen.]

(4.) Leave out from (accordingly) to the end of the Bill.

The first three of the above amendments originated in Committee of the whole House on 22 May, E. Fauconberg in the chair, when a sub-committee was appointed to draw a clause for settling the succession in the family of Hanover, and a clause that no King should marry a Papist, and the King to take the Test. House resumed. Ordered to be in Committee again on the 24th to consider the last two clauses of the Bill, *i.e.*, the Clause concerning *Non Obstantes* and the Clause concerning Grants and Pardons. (MS. Min., 22 May, L. J., XIV., 215.) The Sub-Committee agreed to the second and third Amendments on 23 May, L. Cornwallis in the chair, and to the first Amendment, concerning the Succession on 24 May, when the Chairman was the Bishop of Salisbury (Com. Book, May 23, 24) who reported the three Amendments the same day. They were agreed to by the Committee of the whole House and afterwards, on report from E. Fauconberg, by the House. After an interval, to allow the Royal Assent to be given to some Bills, the House was again put into Committee to consider the last two clauses of the Bill. V. Newport in the Chair. The clause concerning *Non Obstantes* read. Journal read as to that part of the Declaration [of Rights] concerning suspending Laws. The Judges heard as to the *Non Obstantes* being repealed. *Holt, C. J.*: If any matter be to the King only, he may dispense. Some laws the King cannot dispense with. The Act 39 Eliz., or the Test he cannot dispense with. The Act [against] Simony and buying offices. This Clause repeals that which has been the practice several hundred years. *Pollexfen, C. J.*: If it looks forward, there will be many things arise

* The amendments to this clause, shown by italics, in the case of additions, and by square brackets in the case of omissions, were made by the Select Committee of the Commons, to whom the clause was referred. (C. J., X., 187, 190, 211.)

† The Declaration that follows here, is the one against Transubstantiation, &c. in 30 Car. II., St. 2, c. 2.

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before it pass. The Committee then agreed to leave out the two clauses concerning *Non Obstantes* and Grants and Pardons, this being the fourth Amendment mentioned above. (MS. Min., 24 May.) The House, on report, agreed, and ordered the Judges to prepare an Act for regulating *Non Obstantes*. (L. J., XIV., 218.)—On 25 May the Bill was read 3^a with the amendments and passed and returned to the Commons (*ib.*, 219). These amendments were not considered by the Commons till 19 June, when the first was negatived *nem. dissent.*, and the second agreed to. (C. J., X., 187.) On the 20th the fourth was negatived, and the third, after an adjourned debate, was referred to a Select Committee (*ib.*, 190). This Committee, after being revived three times, finally reported the clause on 9 July, with amendments as marked above (*ib.*, 211).—On 11 July the Commons' Reasons for disagreeing with the Lords' Amendments were reported (*ib.*, 213-4 *in extenso*), and the Bill was returned to the Lords. (L. J., XIV., 273.)—On 15 July the Committee appointed to prepare the Lords' Reasons for insisting on their amendments, agreed on some reasons as to the first amendment, and the Judges proposed some words to be added to the last one. (Com. Book, L. J., XIV., 281 *in extenso*).—On 16 July the Bill, with the Reasons, was left with the Commons (*ib.*, 282).—On 29 July, on the report of a Free Conference, desired by the Commons, the Lords adhered to their first amendment by 38 to 29. (MS. Min.)—On 31 July another Free Conference was had, and the Bishop of Salisbury reported they had left the Bill with the Commons. (MS. Min.) After this the Bill dropped in the Commons.

The Bill when revived in November 1689, was considered like the former one, in Committee of the whole House, E. Mulgrave in the Chair. On 16 Nov. the Committee, after amending the clause debarring Papists of the Crown as follows:—

After (Prince) insert (*or by any King or Queen marrying a Papist*).

After (Romish religion) insert (*or shall marry a Papist*).*

After (within the same) insert (*and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance*).†

After (person or persons) insert (*being Protestants*), asked the Judges' opinion as to the word (declared) in the next clause, declaring the King's assent to the Bill. *Atkyns, C. B.*: When we meet with the word, we take it was a law before. On question, the word was then omitted.‡ It was then proposed, that the Judges should draw a clause to oblige every King to take the Test "at the opening of every Session or meeting of Parliament once a year." (Com. Book.)—On 18 Nov., after further debate of this new Clause, which it was proposed at first should be drawn by a Sub-Committee, E. Mulgrave reported, and the House ordered, that the Judges should draw a Clause "that every King and Queen should take the Test at their Coronation or at the opening of their first Parliament." (Com. Book, L. J., XIV., 345.)§—On 19 Nov., in C. W. H. the Judges brought in the

* This Amendment, as first proposed, was to add here (*being a Protestant*).

† Burnet states that this amendment, which he calls an "additional clause," was proposed by himself in the previous Bill, and seconded by E. Shrewsbury. "It passed," he adds, "without any opposition or debate, which amazed us all, considering the importance of it." Hist., IV. 15.

‡ The word is retained, however, in the Act.

§ The Committee also, after a debate on triennial Parliaments, reported that a Bill should be drawn by the Judges for reviving them, and the House ordered accordingly. See Nos. 171 and 191.

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Clause accordingly, which was read. *Proposed* that the king shall not have power to do any regal thing until he take the Test. In case any king or queen that shall succeed to the Crown shall not, within three months after such accession before such Lords and members of the House of Commons of the last Parliament. . . . A clause drawn and read that within two months the king and queen shall take the Test. The Judges' Clause read. A clause drawn and read according to the age of twelve years. Clause agreed to.* The Clause concerning Non Obstantes (§ 2) read. Agreed to adjourn this (MS. Min., 19 Nov., L. J., XIV., 346).—On 21 Nov. the Clause concerning Non Obstantes (§ 2) read. House moved to hear the Judges as to what is practicable in this case. *Dolben, J.*: We received an Order to draw a Bill and a Clause, and we did so, and when we had done we fell into debate of the *Non Obstante*, and we found it of marvellous difficulty and we were of opinion without a very long time to do it. (*Sic.*) On report, the House adjourned the further consideration of this business till the next day, when the Judges were ordered to attend. (MS. Min., L. J., XIV., 349).—On 22 Nov. the Paragraph concerning Non Obstantes was read. Proposed question, Whether, if the king have no dispensing power, it may not be prejudicial to the subject? A Clause offered to be added, and read twice. *Moved* That the Judges be heard to what cases it is absolutely necessary for the Crown to dispense, or, In what case the king may dispense with an Act, or whether he can dispense in no case? Judges asked. *Holt, C. J.*: In many cases wherein there is a penal statute, half to him and half to the informer, the king may dispense. *Pollexfen, C. J.*: Stat: Hen. VI. (Sheriffs), the king doth dispense.† In the Hearth Money Act, by a Non Obstante, they dispensed with [it].‡ [In] the form of Patents, though they have not the particular lands, it has been always allowed.§ In murder, by a Non Obstante they dispense with [the Statute of 13 Ric. II.].|| Where a Statute is for the public good, and the penalty only to the king, judges have thought fit to dispense, as [with] the Statute of Export of Bell-metal.¶ So Cards [were] imported.** Statute of Wine licences has been judged the

* See § 1 of Act, from "And that every King" down to "said ages of twelve years." This was reported as a "little addition" to the Judges' Clause. L. J., XIV., 346. For a further Amendment proposed but negatived in the Commons, see C. J., X., 305.

† A reference, no doubt, to 23 Hen. VI. c. 8, requiring that Sheriffs should be first elected by the Judges. As to the King's power to dispense with this Act, see the case reported in *Dyer* 225 and *Blackstone Com.*, Ch. 9.

‡ The Hearth Money Act was 13 & 14 Car. II. c. 10.

§ "By the Statute 1 Hen. IV., he that petitions to the King for lands, &c., is to mention in his Petition the value of the thing, &c., or else the King's Letters Patent, &c., shall be of no effect. And yet Letters Patent to the contrary are good with a *Non Obstante*." *Atkyns On the Power of dispensing with Penal Statutes* (Parl' Tracts), p. 207. See also *The Prince's Case* in 8 *Coke's Rep.* 29.

|| "Pardons of murder were always granted with a *Non Obstante* of the Statute of 13 Ric. II. st. 2. c. 1 till the time of the Revolution." *Blackstone Com.*, B. IV., c. 31.

¶ The Acts prohibiting the exportation of bell-metal, brass, &c., are 21 Hen. VIII. c. 10; 28 Hen. VIII. c. 8; 33 Hen. VIII. c. 7. §§ 1, 2; and 2 & 3 Edw. VI. c. 37, § 1.

** See *Darcy v. Allein*, 44 Eliz. (The Case of Monopolies), in which it was held that a dispensation or license to have the sole importation and merchandise of cards, without any limitation or stint, was against law, notwithstanding the Statute 3 Edw. IV., which imposed a forfeiture upon their importation. 11 *Coke's Rep.* 84; *Moore* 671; *Noy* 173.

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King may dispense with.* *L. C. Baron [Atkyns]*:† It must be admitted that there has been Dispensation in the Crown for some hundreds of years. The power of dispensing was begun by the Pope, and Kings did dispense, as Edw. III. did. He found fault with it, and yet exercised it. Cites Cott. Abridg. 15 Ric. II. [No. 8]; 17 Ric. II., N. 34. This put a dispensing power in the Council. 2 Hen. IV., fol. 63, at the request of the Commons; they find fault.‡ Cites 25 Hen. VIII. c. 21 [Statute of Dispensations], and 9 Hen. V., [c. 5. touching the election of] Sheriffs. *Dolben, J.*: I can say no more than yesterday. It will be very difficult. The Clause and the Amendment were read. *Question*, Whether this Clause shall stand with the amendment? *Resolved* in the Affirmative. The next Clause, concerning Charters and Grants read and agreed to. A Clause offered concerning the City of London, and laid aside. *Proposed* That the Judges be ordered to bring in a Bill for regulating *Non Obstantes* by Monday come sevensnight. The Judges to draw a Bill pursuant to the Clause concerning the City of London. Then E. Mulgrave reported that they had gone through the Bill, and the Committee are of opinion that the Judges consider of some cases wherein it is fit to dispense with, and what laws are fit to be abrogated, and to draw a Bill and bring it into the House on Monday come sevensnight,§ and that the Judges draw a Bill for restoring the rights and franchises, liberties and privileges of all Corporations that have been invaded, and especially the City of London, with all convenient speed, which the House ordered accordingly (cf. L. J., XIV., 350), MS. Min., 22 Nov.]

175. Nov. 23. Salt Prize Bill.—Draft of an Act to apply a prize of salt lately taken to the victualling his Majesty's Navy. Whereas a certain ship or vessel called the "Mary" of London, laden with French salt, was taken at sea by one of his Majesty's frigates, and is since condemned as prize in their Majesties' Court of Admiralty; and whereas there is a present occasion for salt for preparing and fitting provisions for the use of their Majesties' Navy, which would be in a great measure answered, if the said salt might be applied to the said use; Be it therefore Enacted by &c., That the said salt may be applied and converted to the use and purpose aforesaid; notwithstanding An Act of this present Parliament intituled An Act for prohibiting all trade and commerce with France, any other law or Statute to the contrary notwithstanding. [Read 1st this day, and, on question, rejected. L. J., XIV., 352.]

* See *Thomas v. Sorrell* and the other cases cited in 1 *Coke Inst.* 120 a note, where the whole question of *Non Obstantes* is exhaustively treated.

† See *passim* Atkyns *ut supra*. While tracing in this pamphlet the origin of dispensations back to the Pope, as was argued also in the Case of Commendam (*Davy's Rep.* 696) and acknowledged by C. J. Vaughan in his report of *Thomas v. Sorrell* (*Vaughan's Rep.* 348), Sir Rob. Atkyns expressed a different opinion as Counsel for the Defendant in *Thomas v. Waters*, when, arguing in favour of the Dispensing Power, he stated "Nor were Dispensations introduced here by the Pope, but the Dispensing Power appertains to the King by the Common Law, in cases of necessity." *Hardres' Rep.* 446.

‡ "2 Hen. IV., No. 63: Upon the request of the Commons the King promiseth that he will not from henceforth dispense with the Statute of Provision to Benefices." Cotton's Abridgment, Ed. Prynne, p. 410. This and the two previous cases are cited by Atkyns *ut supra*, p. 233, and the two Acts that follow in *ibid.*, pp. 228, 259.

§ This Bill was introduced on 5 Dec., L. J., XIV., 362. See No. 183.

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176. Nov. 25. Writ of Summons (L. Rockingham).—Writ of Summons, dated 21 Nov., to Lewis Watson de Rockingham, Chr. [Took his seat this day.* L. J., XIV., 353.]

177. Nov. 26. Waynwright v. Yates.—Petition of James Waynwright. Petitioner in 1659 gave a bond to William Wiseman of 1,300*l.* to pay 650*l.* in 1661. Wiseman received 433*l.* 6*s.* 8*d.*, and in 1666 took Petitioner in execution for 1,300*l.*, and in 1674 died intestate, and in 1680 Petitioner as appears by his eldest son's affidavit (Annex (a) below) was discharged. In 1685, Ann, daughter of the said Wiseman, took out letters of administration and gave Petitioner a declaration on the bond for 1,300*l.*, which Petitioner gave to the Respondent Yates, his Attorney, with orders to plead the former judgment. This Yates never did, but suffered John Lilly, Petitioner's Attorney to take judgment by default, and having summoned Ann Wiseman to the Quarter Sessions at Kingston, on 8 Oct. 1685, Mr. Glover, Marshall of the King's Bench, refused to let Petitioner attend, as appears by affidavit (Annex (b) below), and the Justices excluded Petitioner from having any benefit of the Act or their Lordships' order, (*See* Calendar, 11th Report, App., Part II., No. 286), as appears by the order of Sessions annexed (Annexes (c) and (d) below). Petitioner moved by counsel the L. C. Justice Wright in Court to set aside the judgment, and he would plead to it, but was refused. Prays that the Order of Sessions, surreptitiously obtained in Petitioner's absence, may be set aside. *Signed* by Petitioner only. L. J., XIV., 353. [Counsel were heard on 31 Dec. *Mr. Danyell* (for Petitioner): Opens the case on the Order of Sessions. The lands and goods were liable. *Mr. Wainwright* had judgment against him. He applied himself to be relieved against the last judgment at the Sessions. I pray for him this, that the last judgment was obtained by a trick. We hope your Lordships will set aside the Justices' order. *Mr. Ward* (for Yates): I pray the Petition may be dismissed. *Mr. Dobbins* (for Lilly): They are fair practices, I was Counsel for Mrs. Wiseman, but she, not being summoned, is not before your Lordships. Lilly only acted for Mrs. Wiseman. Order of 8 Jan. 1680-1, read. *Ordered* that the Petition be dismissed, MS. Min., 31 Dec., L. J., XIV., 400. See also No. 210.]

Annexed:—

- (a.) 26 Nov. Affidavit of William Wiseman, of St. Andrews, Holborn, sworn cutler, son and heir of Wm. Wiseman, late of St. Alban's, Gent. Sworn 3 Feb., 3 Jac. II. [Appended to Petition.]
- (b.) 26 Nov. Affidavit of Petitioner that Henry Glover refused to allow him to go to the Sessions. Sworn 17 Oct. [Appended to Petition.]
- (c.) 26 Nov. Copy Order of the House of 8 Jan. 1680-1. L. J., XIII., 741. *In extenso*. [Appended to Petition.]
- (d.) 26 Nov. Copy Order of the Justices in Sessions, viz. Rich. Garth, Esq., Sir Adams Browne, Sir Edward Evelyn, and others. Dated 5 Oct., 2 Jac. II. [Appended to Petition.]
- (e.) 5 Dec. Answer of Christopher Yates, one of the Attorneys of the Court of King's Bench. About October 1686, Petitioner brought to Respondent, who had been before concerned for him as his attorney in some affairs, a copy of a declaration filed against him as a prisoner in the King's Bench, in a suit of Ann Wiseman in an Action of debt on the bond, in order to plead Petitioner's duplicate for his discharge under the Acts for the relief and release of poor prisoners for debt. On learning that

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Petitioner had been taken in execution some years before for the same debt, at the suit of William Wiseman, Respondent told Petitioner that if could find the judgment on which he had been taken in execution, he might plead it to the second action; but Petitioner was unable to give any account of such former judgment, and Mr. Coleman, an Attorney of King's Bench, to whom Petitioner referred Respondent, denied ever having entered such judgment. Respondent then advised Petitioner to search for the execution, but Mr. Hawford, an Attorney of the Common Pleas, whom Petitioner directed to search, could not find any such. Respondent, on perusing the said duplicate, found that Ann Wiseman, the plaintiff in the Action, was not named in it, pursuant to the directions of the Act, and, therefore, advised Petitioner that it could not be pleaded to, but referred him to Counsel. Petitioner, however, shortly after, ordered him to plead to it, to give him time to summon Ann Wiseman for his discharge, and Respondent accordingly pleaded condition performed. Respondent tried to induce Glover to let Petitioner go to the Sessions. Denies that he combined with Lilly or any other. He acted faithfully according to his directions. Prays to be dismissed with costs. *Signed* by Respondent; *Countersigned* William Cole. *Endorsed* as brought in this day.

(f.) 5 Dec. Answer of John Lilly, Gent., one of the Attorneys of the Court of King's Bench. Ann Wiseman having brought him the bond to be put in suit against Petitioner, he filed, at her request, a declaration thereon, but he did not take judgment by default. Petitioner, by his Attorney, Yates, pleading payment, the cause was tried at Guildhall, and a verdict found for Ann Wiseman, and Petitioner committed on judgment being entered. Respondent never combined with anyone to injure Petitioner, nor did he ever know of any Order of the House till Friday last, when he came for a copy of Petitioner's petition. The Master of the King's Bench was satisfied that the said judgment was fairly and legally obtained. The matters relating to the Order of Sessions concern Mrs. Wiseman only, who is not summoned. Prays to be dismissed with costs. *Signed* by Respondent; *Countersigned* Sim. Harcourt. *Endorsed* as brought in this day.

(g.) 5 Dec. Answer of Henry Glover. Knows nothing of any proceedings between Lilly and Yates. Admits that he refused to let Petitioner go to the Sessions, being advised that he was out of the benefit of the Act. *Signed* by Respondent; *Countersigned* Tho. Danyell. *Endorsed* as brought in this day.

(h.) 11 Dec. Petition of James Waynwright. Prays the House to admit him *in formâ pauperis*, and assign him John Danyell, Esq., for his Counsel. L. J., XIV., 368.

178. Nov. 29. Deye v. Thwaites.—Petition and Appeal of John Deye and Frances, his wife, Defendants in a cause in which Martha Thwaites by her guardian was Plaintiff. William Capell, late of Rushden, Herts, mortgaged part of the manor of Barners Roothing, Essex, to Nicholas Burton, for 400*l.*, and afterwards sold it to William Thwaites, who paid off the mortgage, and, to secure against incumbrances, by Thwaites' direction the mortgage was assigned to his mother-in-law, Mrs. Lymbrey, as Thwaites' Trustee. Thwaites, by deed of settlement in 1678, conveyed the manor to Heath and Vesey to the use of himself and his wife for life, then to the use of their children

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and for such estates as he should appoint, and for want of such appointment to the use of their second son Thomas and his daughter Frances, one of the Appellants, and by his Will without a seal, dated 21 Aug. 1679, he bequeathed half his personalty to his daughter Martha and 100*l.* a year out of the rents of Varnish Hall to his son Thomas, in case of whose death without issue, the 100*l.* a year was to go to the eldest son James, who was to pay his two sisters 500*l.* a piece out of it. Mrs. Lymbrey, claiming the mortgage entrusted to her as her own money, bequeathed it to the two sisters Frances and Martha in equal portions. Thomas Thwaites died, and in 1687 Martha brought her Bill in Chancery against Petitioners, and James Thwaites and others, for her 500*l.* and her moiety of the 400*l.* mortgage, and the Lords Commissioners on 10 July 1689 pronounced a Decree charging Appellants' estate only, and not that of James Thwaite, with these sums with interest, without giving them any right to indemnify themselves against James. Appeal against the Decree, as the 400*l.* should follow the inheritance, and James was liable for the 500*l.* Signed by Appellant John Deye; Countersigned J. Trevor and G. Paunceforte. L. J., XIV., 355.* [The Cause was heard on 30 Dec. *Sir Ambrose Phillips* (for Appellants): Mr. Thwaites making a settlement with a power to revoke by writing signed and sealed, does this by writing, but not under seal. The question is whether a man having power to limit uses under hand and seal, can do it by his hands without his seal? Two witnesses to this. *Mr. Ward* (for Appellant): Mr. Thwaites makes this voluntary conveyance to himself for life, and after his decease to his children. Whether a rent issuing out of a manor shall be in the same case as the manor itself? This is against a payment of 100*l.* a year out of the rents, and limited to several. These powers rise upon a voluntary conveyance, and can be no otherwise. *Mr. Serjeant Hutchins* (for Respondent): Martha Thwaites, daughter of William Thwaites. It is sealed with the same seal that the deed is sealed with. Endorsement of the assignment read. We shall prove it was sealed, and in 1680 it was seen sealed in the Prerogative Court. We are here upon the declaration of a trust. *Attorney-General* (for Respondent): The assignment shows it was her money. If there had been no seal, yet this had been a good appointment; but it is in proof that there is and was a seal. After a reply, the Speaker reported, and the House dismissed the Appeal with 20*l.* costs. [MS. Min., 30 Dec., L. J., XIV., 398. The case below is reported in 2 Vernon, 80. See also No. 182.]

Annexed:—

(a.) 12 Dec. Answer of Martha Thwaites, Spinster, an Infant, by Humphrey South her Guardian. The Estate in question was Berners Rothering *alias* Varnish Hall. William Thwaites was master of a ship and was killed by the Turks on a voyage to the Straits. His will was sealed, and was opened after his death by Isaac Heath, the surviving Trustee of the settlement, in the presence of James Strutt, Respondent's then Guardian, and one Thomas Porter. In 1682 Appellants brought a Bill in the Exchequer against Heath, James Thwaite, then an infant, and James Strutt, falsely suggesting that there was an erasure in the deed of Settlement, the name of Frances Thwaites the Appellant having been substituted for that of James Thwaites, and, on the evidence of Sir Thomas Jenner and his Clerk, a jury

* The words "Lord Limbrey" in the Journal are a mistake for "said Lymbrey," referring to Mrs. Lymbrey.

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sustained the allegation, and gave possession of the manor to Appellants. The decree in Chancery, in the suit brought by Respondent, is just, James Thwaites never having received any of the profits of the estate. As for the mortgage, it was redeemed by Mrs. Lymbrey's own money. *Signed* by Respondent; *Countersigned* W^m. Whitlocke. *Endorsed* as brought in this day. See L. J., XIV., 398.

(b.) 21 Oct. 1690. Petition of Respondent, that the Appellants may be attached for non-payment of the costs awarded to Respondent by the House. L. J., XIV., 526.

(c.) 16 Oct. 1690. Affidavit of Mathew Cock that he had demanded the costs under a letter of attorney and that the Appellant had not yet paid them. Sworn this day. Appended to preceding.

179. Dec. 2. Gore v. Rolt.—Petition of Sir John Gore, Knt. Petitioner wishing to sell some lands in Hertfordshire worth above 23,000*l.*, agreed (after objecting to no allowance for pollards on the estate being included in the valuation, as to which it was subsequently settled that the term "hornbeam" should be taken to include pollards) to seal Articles of Purchase in May 1688, in favour of Sir Thos. Rolt, who was to pay either 22,500*l.*, or a price fixed by valuers, any disagreement between whom to be referred to a Mr. Christie. Christie turned out to be related to Holt, and gave an award at least 1,600*l.* below the fair value of the lands and timber, which was confirmed by a Decree of the Court of Chancery of 16 Dec. 1689, against which Petitioner Appeals. *Signed* by Appellant; *Countersigned* Geo. Hutchins and Charles Porter. The Endorsement to the Answer (Annex a) appended hereto, states that the Appeal was brought in this day, and reported from the Committee 2 Jan. 1689–90. L. J., XIV., 401. Pet. Book 31 Dec. [The Cause was heard on 29 March. Mr. Serjeant Hutchins (for Appellant): Speaks to the admeasurement of the park, which is made up by the ground on which the park stood. Mr. Christie says in his award that if any hurt is done, it is on Sir Thos. Rolt's part. The Bill in Chancery contains the matter of the award. The Court of Chancery had ordered the Master to take the account according to Mr. Christie's award, and that possession should be delivered in twelve days. The execution of the award is what we complain of. Non-consent to the award is what we stand upon, and therefore the Court ought not to have confirmed it. Sir Charles Porter (for Appellant): The question is whether the Court of Chancery has done well to affirm the award of Mr. Christie's with the circumstances attending it. The clause in the award is that [if] he erred, it was on Sir Thomas Rolt's side. Never was any award decreed in Chancery without some consent, but only on a bare submission of themselves. 100*l.* was offered in the Court to go off the bargain. Mr. Trevor (for Respondent): There was no colour of surprise in this case. We offer heads, yet they are superseded by the articles under hand and seal. Mr. Christie's clause in the latter end they except against, and that is nothing to this, nor does it impeach the agreement. He never exhibited a Bill against us to set aside this decree. The award is a valuation in pursuance of the Articles. Sir John Gore is in possession in breach of the Articles. We tendered the money at the very day. Mr. Finch (for Respondent): Sir Thos. Rolt by the Articles was to give 23 years' purchase at the yearly rents. He pays down 10,000*l.*, and he was put in possession of all but the house. I hope the offer will not avail with your Lordships. The Court of Chancery must make this Decree and no other. As to whether Mr. Christie has

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dealt uprightly in this case, they have not shown your Lordships anything to the contrary in his actions. This is not properly an award; this is pursuant to such Articles. What action can any man have on breach of this award? This is no more than that the Court of Chancery shall oblige you to perform articles under hand and seal, which is done every day. (MS. Min., 29 March 1690.)—On 31 March the Speaker reported the case. After consideration had thereof and debate thereon, the paragraph is read wherein "hornbeam" is mentioned. The endorsement and award read. Counsel called in again, one on each side. *Mr. Christie* asked whether he valued hornbeam or not? He answered, "I did." *Counsel for Appellant* says, We can show he did not. He reads to what he did value. *Mr. Christie's* depositions are in that point. Sixth Interrogatory. *Mr. Trevor*: What they have read makes not one way or the other. *Mr. Christie*, asked what made his value less than Sir John Gore's?—"I did value the oak, ash, elm, and hornbeam." Counsel withdraw. After debate, *Question*, Whether the Decree shall be reversed? Resolved in the Negative. Contents 19: Not-contents 19. Semper præsumitur pro negante. Tellers L. North and L. Granville. (MS. Min., 31 March, L. J., XIV., 444.)

Annexed:—

- (a.) 9 Jan. 1689–90. Answer of Sir Thomas Rolt, Knt. The lands in question are the Manors of Sawcombe and Temple Chessing and all the rest of Appellant's property. Thomas Christie of Bedford was the Referee. Respondent was decreed to pay one Samuel Poynter the amount of his mortgage on the Estate, and on payment of the residue of the price awarded to Appellant, his son Ralph Gore was to convey the premises to Respondent. The Decree is just. *Signed* by Respondent; *Countersigned* Tho. Trevor. *Endorsed* as brought in this day.
- (b.) 10 Jan. 1689–90. Petition of Respondent for a day for hearing. L. J., XIV., 408.
- (c.) 22 March 1689–90. Petition of Appellant for a short day for hearing, his wife and family having been turned out of possession during the Prorogation. L. J., XIV., 435.
- (d.) 26 March 1690. Petition of Respondent to postpone the hearing till after 10 April, his Solicitor and Counsel being out of town till then. *Endorsed*: Nothing done on it. [Read this day. MS. Min.]
- (e.) 28 March 1690. Similar Petition of same for postponement of hearing to 3 April. *Endorsed*: Nothing done on it. [*Sir Thos. Rolt* was called in and asked whether he would deliver up possession if the day were put off? He answered, that he acted by advice of Counsel, and could not do anything. MS. Min.]

180. Dec. 3. Brooke v. Crispe.—Petition and Appeal of Sir Robert Brooke, Bart., and Dame Martha, his wife, relict and administratrix of Christopher Tomlinson, deceased. George Bowerman, Esq., being possessed for the remainder of a term of the Ballast Office, assigned his lease in 1677, for 700*l.* a year, to Christopher Tomlinson, to whom he mortgaged the rent as security for a loan of 2,500*l.* It was agreed that if the Office yielded 900*l.* a year, or more, the rent was to be increased to within 100*l.* of the profits. On the application of Bowerman, an account of the profits was ordered by the Court of Chancery. George Bowerman and Tomlinson having died, the cause was revived, and the Master, Sir Robert Legard, took an account, charging Appellants 12*d.* per ton for ballast, whereas they were only allowed to charge 10*d.*, the extra 2*d.*

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being interest for credit given to masters of vessels. The Court has provided, as an expedient, that Appellants should have security to save them harmless from the lessors, but no such thing ought to have been admitted; and has also let into the cause Sir Charles Porter for a demand of 53*l.* a year out of the office, and decreed the same, with arrears. Appeal from this decree, and pray that Edward Crispe, as one of George Bowerman's executors, and Mary Marshall and Ann Bowerman, executrices of John Bowerman, his other executor since deceased, may be ordered to answer. *Signed* by Appellants; *Countersigned* W. Thomson and Robert Fairbrard. L. J., XIV., 359. [The Cause was heard on 29 April 1690. *Serjeant Thomson* (for Appellants): A lease was made of the Ballast wharf by Bowerman. *Mr. Ward* (for Appellants): Serjeant Hutchins allows the Covenants, that there are two; yet we are to have upon the value of the Office. The 2,500*l.* was not paid to us at the end of the five years. *Serjeant Hutchins* (for Respondents): It is the most informal Decree I ever knew; it was made by L. Nottingham. Bowerman had the lease from Trinity House. *Sir W. Whitelocke* (for Respondents) was also heard. The Speaker then reported, and after debate, the House reversed the Decree in part. MS. Min., L. J., XIV., 479.]

Annexed:—

- (a.) 13 Dec. Answer of Mary Marshall, Ann Bowerman, and Edward Crispe. The charge of 12*d.* per ton was just, as Tomlinson was only a mortgagee and was bound to account for all his receipts; and it appears from the books of the office that that sum has always been taken by the lessees of Trinity House ever since the lease made to Bowerman. The books of account setting down only 10*d.* a ton were falsified; and in the true books there was no distinction made between wet and dry ballast, all being sold as dry. Sir Charles Porter's annuity was a charge on the Office, provided for expressly in the deed of assignment, to be paid by Tomlinson. *Signed* by the first two Respondents; *Countersigned* G. Hutchins and W. Whitelocke. *Endorsed* as brought in this day.
- (b.) 2 Jan. 1689–90. Petition of Appellants that Andrew Clench, Doctor in Physic, may be admitted to enter into Recognizance on their behalf. L. J., XIV., 401.
- (c.) 10 Jan. 1689–90. Petition of Respondents that Sir Robert Brooke be ordered to enter into Recognizance by some short day. Appellants design nothing but delay. *Signed* by Marshall and Bowerman. L. J., XIV., 408.
- (d.) 25 March 1689–90. Petition of Appellants that the Appeal may be revived, and that Sir Charles Porter may be made a Party Respondent. L. J., XIV., 437.
- (e.) 1 April 1690. Answer of Sir Charles Porter, Knt. Tomlinson had agreed to pay the annuity, and Appellants had paid it for five or six years. *Countersigned* W^m. Whitelocke.

181. Dec. 4. Warden *v.* Cole.—Petition of Robert Warden. Petitioner purchased of Robert Le Wright a freehold estate in Kingston-upon-Thames, and also lent him money on an estate mortgaged to one Boughy, which George Cole, as Executor to one Joseph King, afterwards claimed to have purchased of the Executors of one Bowerman, alleging that Appellant was only a Trustee for Le Wright. L. Chancellor Jeffreys pronounced a Decree awarding Cole the mortgaged premises, as well as the purchased estate, which he had not claimed. Appellant's witnesses had gone over to the now King, and did not return till his

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Majesty came to London. Appeals against this Decree, and prays that proceedings may be stayed. *Signed* by Petitioner; *Countersigned* W^m. Wagon. [The Petition was read this day and Respondent ordered to answer. (L. J., XIV., 360.) In the Committee for Petitions, to whom the Petition and Answer were referred on 12 Dec. (*ib.* 369), *Sir Charles Porter* (for Appellant) says the decree is unjust, and the matter in dispute is not of such small value as is pretended in the Answer. *Mr. Ward* (for Respondent): The whole thing in controversy is but 40*l*. There never was a penny paid by Warden in this case. They have had three verdicts at law. *Sir Charles Porter*: We own one verdict against us, but our witness which we have now was not then in England. We will be concluded by a verdict if they will consent to a new trial. We hope the House will refer it to Chancery again. This matter, I conceive, is very fit for your Lordships' consideration. They withdraw. After debate, the Counsel are called in again and asked whether Hughes was not examined in Chancery, and whether his deposition was not read at the trial? *Sir Charles Porter*: It was. The decree is grounded upon the verdict. *Mr. Ward*: It is possible the Chancery does not decree against a verdict. After publication passes of any deposition, he cannot be examined again. The Committee then ordered to report as in L. J., XIV., 376, leaving the matter to the determination of the House. (Pet. Book, 18 Dec.)—On report, the Petition was rejected. (L. J., XIV., 376.)]

Annexed:—

- (a.) 12 Dec. Answer of George Cole. Appellant's pretended purchase was only a matter of 40*l*. He had really paid nothing, but was in Le Wright's debt at the time of the death of the latter in the Fleet. He was only a Trustee. His only witness who had gone over to the King was one Anthony Hughes, who was duly examined at the trial. *Signed* by Respondent; *Countersigned* Edw. Warde. *Endorsed* as brought in this day.
- (b.) 12 Dec. Order referring Petition and Answer to the Committee for Petitions. L. J., XIV., 369. *In extenso*.

182. Dec. 5. Thwaites *v.* Deye.—Petition of James Thwaites, son and heir of William Thwaites, by Frances his wife, both deceased. The circumstances of the cause are given in No. 178. This Petition is almost identical with Martha Thwaites' answer (Annex a. to No. 178). Petitioner complains that the Decree which gave the Manor to John Deye and his wife Frances, was pronounced during his infancy, and did not give him a day to show cause against it when he should come of age. Appeals against it, and prays that Deye and his wife may be ordered to answer. *Signed* by Appellant; *Countersigned* Geo. Hutchins and Geo. Treby. L. J., XIV., 361. [The Cause was first heard on 25 April 1690. On Serjeant Hutchins' opening the case for the Appellant, Counsel for Respondents insist to know whether they have any power from Thwaites. A Letter of Attorney produced. *Serjeant Hutchins* (for Appellant) then proceeds. The will, he says, was proved. The deed was drawn with a blank, and there is an erasure of the words "James" and "eldest son." It is suggested that it was Thomas and Frances. The question is whether the erasure was before the sealing or not? The erasure was made by way of amending the deed. The grandmother Mrs. Lymbrey, who paid the money, was present at the sealing of the deed. *Sir George Treby* (for Appellant) is heard. The will read, and the settlement recited by deed. *Mr. Finch* and *Mr. Ward* are heard for Respondents. The decree was then reversed in order to a new

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trial. (MS. Min., L. J., XIV., 474.)—The matter of the Petitions given in Annexes (f), (h) and (i) below was argued by Counsel on 23 May 1698, when *Serjeant Wright* and *Mr. Sloane* were heard for the Petitioners, Lady Bridgeman and others, and the *Attorney-General* and *Sir Thomas Powys* for Thwaites. After debate and reading the former Appeal and the Order of the House, the Question was put, Whether the Order be so explained as that the trial be upon the same issue as was before tried? Resolved in the Affirmative. It was then Ordered accordingly, the issue to be tried within a year, and either side, after the trial, to have leave to resort to the House again. (MS. Min., L. J., XVI., 294.)—On 23 March 1699–1700 Counsel were heard on the Petition of Deye and others. (Annex (l) below.) *Serjeant Wright* (for Petitioners): The Appellants have never offered to try this at all. In May 1698 they petition the House and desire they may be confirmed or the Order discharged, and then a trial was ordered within a year. Two years have now passed since these two Orders, and not one step have they made towards a trial. *Sir Thomas Powys* heard for the now infant Thwaites at the Bar. Mr. Bracket brought an ejectment, but was stopped by Deye on behalf of his wife. They produce the Injunction. We have a title under the deed by appointment, which Deye kept from us. By the deed of appointment it is allowed that the two daughters should have 500*l.* apiece. Deye appeals by himself, and since he had a power to appoint the lands, he had power to appoint. Thwaites died in July in India, and the suit is abated by his death. We hope his infant shall have the benefit of the deed of appointment. Reads Order of 1690. The decree was reversed to the intent James Thwaites might have a new trial. Reads Order of 23 May 1698, ordering a trial on the same issue. Deye's Bill in Exchequer suggests William Deye departed not having made any appointment, and so it is now hoped that your Lordships will exclude us. This appointment was proved as a will. Desires six months for the infant to try it. Counsel withdraw. The Petition of Deye and others is read. *Proposed*, that six months longer be allowed for Thwaites the infant to try it. After debate, Counsel called in and asked whether they admit the deed of appointment? *Serjeant Wright* admits it and offers to pay the money. It has been acquiesced in ever since. *Sir Thomas Powys*: If they admit we shall have whatever this deed gives us, whatever it is, we have now no more to ask. *Serjeant Wright*: We desire only that the rased deed may be at quiet after 17 years time. Counsel withdraw. *Ordered*, That Thwaites have six months time to try the Cause upon the old issue, the Counsel having at the Bar consented that the deed of appointment shall be allowed for the advantage of Thwaites. (MS. Min., L. J., XVI., 558.)—On 24 March 1700–1, a Petition was presented on behalf of Josiah Thwaites, the infant, stating that a trial had been had and a verdict found in favour of the deed, and praying that the decree complained of might be reversed absolutely. (Annex (m) below.) The Respondents not answering, another Petition was presented on his behalf for a hearing *ex parte*. (L. J., XVI., 650.) In the Committee, appointed on reading this Petition, to search for former proceedings in the Case, L. Longueville in the Chair, an Abstract of proceedings, prepared by the Clerk, was read and compared with the Journals, and Mr. Brocket and Mr. Clayton, the Solicitors, were called in. *Mr. Brocket*: We cannot serve Mr. Deye in any other manner than we have done by leaving the Order at his lodging, for he keeps out of the way. *Mr. Clayton*: Appears not for Deye, but for Lady Bridgeman, being greatly concerned in this matter. He thinks she should have been mentioned in the Petition, that she might have answered. *Ordered* to report the Abstract. (Com. Book,

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14 April 1701.)—The House, on report, ordered the Cause to be heard on 2 May, and that John Deye and his wife should answer, if they thought fit, in the meantime. (L. J., XVI., 651.)—The Cause was heard on 10 June. *Mr. Cooper* (for Thwaites): We hope to have a reversal of the decree in the Exchequer and to have our costs. We are the heir at law, and have had a full and fair trial. *Sir Thomas Powys* (for the Infant): We are to pray an end of that which is begun, and to reverse a decree wholly which is now reversed in part. *Mr. Dod* is heard for Deye. Counsel withdraw. After an interval, to receive a Message from the Commons, Counsel are called in again. *Mr. Dod* proceeds. We never heard of James till after we had lent our money. Lady Bridgeman, who is a real purchaser, desires a new trial. *Mr. Montagu* (for Lady Bridgeman): My Lady can have no remedy but by your Lordships. The nature of the thing is so that she cannot obtain her right by an ejectment. *Mr. Cooper* (in reply): Lady Bridgeman may try this in an ejectment. *Sir Thomas Powys* (in reply): Refers to Order of 23 March 1699–1700. We hope the last verdict shall stand, and that they shall have no more trials. The House then ordered a new trial, etc., as in L. J., XVI., 734 (MS. Min., 10 June 1701).—Deye, having obtained a verdict on a new trial, petitioned the House to affirm the Decree in Exchequer. (Annex (o) below.) Thwaites having answered this Petition (Annex (p) below), Counsel were again heard on 9 March 1701–2. *Mr. Browne* appearing for Deye, the Lords stayed for *Sir Thomas Powys*, who, having come, says he is for the Infant. We hope to have relief, as we have had. The deed was altered before the sealing. We hope, since there is verdict against verdict, it will not be taken to prejudice the infant, but that he may have another trial in this case. Reads Decree and Orders of the House. There is an allowance to Lady Bridgeman to produce her deed of Mortgage at the last trial. We hope we shall not be the worse for Lady Bridgeman's getting into the estate. We were not bound to admit her deeds as legal. *Mr. Browne*: We hope to have the Decree reversed. *Mr. Dod* is heard for Lady Bridgeman, and *Sir Thomas Powys* and *Mr. Browne* are both heard in reply. Order of 23 March 1699–1700 read. The House then affirmed the Decree in Exchequer with an alteration giving the Infant the benefit of the Deed of Appointment. (MS. Min., L. J., XVII., 64.)]

Annexed:—

- (a.) 19 Dec. Petition of the Respondent Deye for further time to answer, as he has mislaid some of his papers. L. J., XIV., 376.
- (b.) 21 Dec. Petition of Appellant. Respondent's Petition is only for delay. Prays he may be ordered to answer before Christmas. L. J., XIV., 395.
- (c.) 30 Dec. Answer of John Deye, Gent. and Frances his wife. William Thwaites, understanding that his mother-in-law would provide for Petitioner, always intended to leave his daughter Frances, the Respondent, as well provided for, and so left her the Manor of Barners Roothing, which is not Varnish Hall. *Signed* by Respondents. *Endorsed* as brought in this day.
- (d.) 27 March 1690. Petition of Appellant for a short day for the hearing, which had been put off at Respondents' instance. L. J., XIV., 440.
- (e.) 25 April 1690. Order and Judgment of the House this day. L. J., XIV., 474. *In extenso*. *Signed* Math. Johnson, Cler. Parliamentor. [Appended to next paper.]

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- (f.) 8 April 1698. Petition of John Deye and Frances Deye, his wife, Dame Susanna Bridgeman, Sarah Paunceforte, Grimbold Paunceforte, Esq., and Christopher Cratford, Gentleman. Appellant has never taken any steps to obtain another trial at law, nor does he intend to do so. Pray that the Order of 25 April 1690 for a new trial may be discharged and the Decree of the Court of Exchequer affirmed, Petitioners having occasion to dispose of their interest in the premises, but being unable to find purchasers, while the order for a new trial hangs over their title. *Signed* by all the Respondents except Sarah Paunceforte. L. J., XVI., 260.
- (g.) 16 April 1698. Petition of Dorothy Thwaites, wife of James Thwaites, on behalf of herself and children. Respondent's husband left England about three years since for East India, as captain of the "King William," and is not yet returned. Prays for leave to make her defence, in his absence, on behalf of her children, and for further time to answer. L. J., XVI., 265.
- (h.) 2 May 1698. Petition of Dorothy Thwaites, wife of James Thwaites, captain of the ship "King William," now in East India, and of Josiah, Emma, and Elizabeth, infants, their children. James Thwaites brought an action of ejectment after their Lordships' judgment in 1690, and was proceeding to a trial, when his attorney was served with the injunction granted by the decree which had been reversed by the House, and the Court of Exchequer refused to relieve him. Deye, after having hindered a new trial, would now in James Thwaites' absence, draw over the matter into a new examination. Pray that the Petition of Deye and his wife (Annex f.) may be dismissed, and that if the other Petitioners have any title to the estate, they may be left to take their course in law or equity, they not being parties to any of the suits, and Petitioner a stranger to their pretences. *Endorsed* as brought in this day.
- (i.) 14 May 1698. Petition of Dorothy Thwaites, wife of James Thwaites, captain of the ship "King William," now in East India, and of Josiah, Emma, and Elizabeth, infants, their children. James Thwaites brought an action of ejectment after their Lordships' judgment in 1690, and was proceeding to a trial, when his attorney was served with the injunction granted by the decree which had been reversed by the House, and the Court of Exchequer refused to relieve him. Deye, after having hindered a new trial, would now, in James Thwaites' absence, draw over the matter into a new examination. Pray to be heard against Deye's Petition, and that James Thwaites may have leave to try his title to the lands as by law he may, and not be confined to the issue directed by the Court of Exchequer. L. J., XVI., 285.
- (k.) 23 May 1698. Order and Declaration of the House this day. Appended to next Paper. L. J., XVI., 294. *In extenso*.
- (l.) 18 March 1699-1700. Petition of John Deye and Frances his wife, Dame Susanna Bridgeman, Sarah Paunceforte, Grimbold Paunceforte, Esq., and Christopher Cratford, Gent. One Jonathan Ball, a witness for James Thwaites at the trial, was convicted of perjury in his evidence and had to stand in the pillory. James Thwaites has made no step towards a new trial which was ordered on 23 May 1698 to be had within a year. Pray that the decree of the Court of Exchequer, founded on the

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verdict of the former trial at Bar, may be affirmed. L. J., XVI., 550.

- (m.) 24 March 1700-1. Petition of Josiah Thwaites, an infant son and heir of James Thwaites, deceased, who was son and heir of William Thwaites, deceased. A long trial has been had at the Bar of the Exchequer, and Petitioner has obtained a verdict that the deed of settlement, dated 12 Dec. 1678, was not rased after execution thereof; whereby Petitioner is entitled to the full benefit of the settlement and deed of appointment against Deye and his wife and all claiming under them. Prays that the decree, which was made on part of Petitioner's father's case only and without the said deed of appointment, may be absolutely reversed with costs, and that Deye and his wife may be ordered to answer. *Signed* by Dorothy Thwaites for Josiah, her son; *Countersigned* J. Brockett. L. J., XVI., 633.
- (n.) 8 May 1701. Answer of John Deye, one of the Respondents, to preceding Petition. Respondent never concealed the will or deed of appointment of Petitioner's grandfather, as is falsely alleged. Petitioner seeks to deprive Respondent's wife of her due portion. Petitioner's father had time enough to have had a new trial before he went to India. The ejectment that he brought, was contrary to the intent of the Order. Lady Bridgeman and her trustees took upon them to manage the last hearing in the House and the last trial, and would not suffer Respondent to have any share in the management. Respondent's wife has taken all courses to ruin Respondent and their children in this matter. As to the rasure, it was made after, not before sealing. Respondent would never have made a rasure to destroy his own title. The first verdict, found when the witnesses were alive, should not be concluded by the last one, gained by mistake. Prays that the decree may be affirmed. *Endorsed* as brought in this day.
- (o.) 29 Jan. 1701-2. Petition of John Deye, Respondent. Petitioner on a new trial last term, obtained another verdict that the rasure was made after sealing the deed. He has been compelled by Appellant and his father to expend above 2,000*l.*, for which the premises are mortgaged to Lady Bridgeman, about the title, which has been litigated about 20 years, and Frances, Petitioner's wife, eloped about 6 years since and joined against Petitioner and her children, and is divorced, but first levied a fine of the premises and declared the uses thereof to Petitioner and his heirs and joined in the mortgage. Petitioner and children are under great hardships. Prays that the Decree may be affirmed with costs, and that until payment thereof, Appellant may be excluded from the benefit of the will. *Signed* by Respondent; *Countersigned* Richard Godfrey. L. J., XVII., 24.
- (p.) 23 Feb. 1701-2. Answer to preceding, of Josiah Thwaites, an infant, son and heir of James Thwaites, deceased, who was son and heir of William Thwaites, deceased, by Dorothy Thwaites, widow, his mother and guardian. The jury after sitting up all night, did not bring in their verdict till noon the next day, when, having been denied any sustenance, though it was consented to by both sides, they were so faint and tired out that the majority were constrained to find a verdict for Deye. Prays their Lordships not to affirm the Decree in Exchequer, which was unjust, but to grant a fair and indifferent trial. *Signed* by

Dorothy Thwaites; *Countersigned* St. John Brodrick. *Endorsed* as brought in this day.

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183. Dec. 5. Non-Obstantes (Repeal of Clauses) Bill.—Draft of an Act for the repeal of divers clauses in the several statutes herein-after mentioned. Whereas the restraints and limitations put upon the King's pardons and grants by the several Acts of Parliament herein-after mentioned have been found unnecessary and inconvenient, and have been usually dispensed with, and so are become useless, Be it enacted by, &c., That so much of an Act of Parliament made in the second year of the reign of King Edward III. as concerns the granting of pardons, and of one other Act of Parliament made in the fourth year of the reign of the said King Edward as concerns the confirming of the said Statute touching granting of pardons, and of one other Act of Parliament made in the tenth year of the reign of the said King Edward as concerneth granting of pardons contrary to the aforesaid Statutes; And so much of one other Act of Parliament made in the same year of the reign of the said King as requireth the finding sureties by him that obtaineth a pardon, or the future good behaviour; And so much of one other Act of Parliament made in the 14th year of the reign of the said King Edward as concerneth granting of pardons; And so much of one other Act of Parliament made in the 27th year of the reign of the said King Edward, as requireth the putting in the suggestion upon which a pardon should be granted and the name of the suggester; And so much of one other Act of Parliament made in the 13th year of the reign of King Richard II. as requireth the specifying the offence in a pardon of murder, treason, or rape; And so much of one other Act of Parliament made in the 16th year of the reign of the said King Richard as is in confirmation of the said last-mentioned Act; And so much of one other Act of Parliament made in the 14th year of the reign of the said King Richard as restraineth granting the offices of Customer, Controller, and other the offices therein mentioned for life or otherwise than only at the King's pleasure; And so much of one other Act of Parliament made in the 17th year of the reign of the said King Richard, as concerneth the granting the Office of Searcher and other the Offices therein mentioned for life or years; And so much of an Act of Parliament made in the first year of the reign of King Henry IV. as is in confirmation and for putting in execution of the last-mentioned Act of the said King Richard; And so much of one other Act of Parliament made in the 31st year of the reign of King Henry VI. as maketh Letters Patents of the offices therein mentioned granted contrary to the effect of the last-mentioned Statutes of King Richard II. and King Henry IV. to be void; And so much of one other Act of Parliament made in the first year of the reign of the said King Henry IV. and of one other Act of Parliament made in the second year of the reign of the said King as requireth putting the value and other things therein mentioned in a Petition to the King for grants to be made; And so much of the several Acts of Parliament commonly called the Statutes of Mortmain as restraineth grants to Lay Corporations, shall be and are hereby from henceforth repealed, annulled and made void. [Read 1^a this day, but dropped after Commitment to C. W. H. L. J., XIV., 362, 418.]

184. Dec. 6. Cooke's Estate Bill.—Amended Draft of an Act for the enabling of Trustees to sell certain lands of Richard Cooke, deceased, to pay debts and to raise a portion for his daughter. Identical, as amended, with the Act. (*See* 28 Oct. 1690.) The amendments on this draft are changing the infant's name from "Richard" to "Arundel," and

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excluding from the operation of the Bill any other lands entailed upon him. L. J., XIV., 362. *See also* Com. Book, 31 Dec. [Dropped in the Commons.]

Annexed :—

(a.) 31 Dec. Consents, dated 20 Dec., of William and Ann Younge, Mary Cooke (niece of Richard Cooke) and Rolt Maltward (his father-in-law) to the Bill. Produced to Committee this day. Com. Book.

185. Dec. 12. *Jervis v. Preston*.—Petition and Appeal of Francis Jervis. Petitioner's father, William Jervis, died in 1661 seized in fee of a copyhold estate worth 26*l.* a year in Old Branford within the Manor of Zeeling, Middlesex, and leaving two sons, John and Petitioner. The estate, being of the tenure of Borough English, should have descended to the youngest son, the Petitioner; but as he was in Virginia at the time of his father's death and for 20 years after, his eldest brother took possession of it, and made some disposition of it to Mrs. Preston. On Petitioner's return, he brought an ejectment against John Preston, Mrs. Preston's son, and his title was affirmed; but Preston refused to give up possession and obtained a Decree in Chancery against him, on 16 May 1685, on the ground that Petitioner had made an agreement with his brother, which Petitioner denies. Prays that the Decree may be reversed and Respondent ordered to answer. *Signed* by Appellant; *Countersigned* Charles Porter and Tho. Filmer, who certify that they conceive the Petitioner has just cause to appeal. [Read this day, on report from the Committee for Petitions. (Pet. Book, 11 Dec. L. J., XIV., 369.) The Cause was heard on 15 Jan. 1689–90. *Sir Charles Porter* (for Appellant): We have given no release at all of our inheritance to the purchaser. There is no ground to warrant the Decree. *Mr. Ward* (for Appellant) is heard. *Sir W. Williams* (for Respondent): Speaks as to the bond to the purchaser. They say there is law for them, but there is equity against them. Our bond is directly proved in the cause. *Sir W. Whitelocke* (for Respondent) is heard. Witnesses sworn to prove the bond. The Speaker having reported, the House affirmed the Decree. (MS. Min. L. J., XIV., 413.)]

Annexed :—

(a.) 18 Dec. Affidavit of John Preston, the Respondent, that he had only just obtained a copy of the Appeal, and cannot yet answer. *Noted*. Pray only five or six days' time. Sworn on 17th and read this day. MS. Min.

(b.) 30 Dec. Answer of John Preston. Respondent purchased the estate for full and valuable consideration. Appellant agreed to execute the release ordered by the Decree if Respondent would remit him his costs and pay him 50*l.*, but, after receiving part of the money, refused to fulfil his agreement. Prays that the Appeal may be dismissed with costs. *Signed* by Respondent, in whose hand the signatures are copied of Geo. Hutchins and Ric. Holford. *Endorsed* as brought in this day.

186. Dec. 12. *Foster v. Munt*.—Amended Petition of Anthony Foster and Elizabeth his wife, and James Browning, an infant, by his Guardian, Executor of his late mother, Katherine Browning, which said Elizabeth and Katherine were the only children of John Markland, lately deceased, the Respondents being John Barnard, *alias* Barney, Assignee and Administrator of Humphrey Munt, surviving Executor of the said John Markland, and Robert, Samuel, Sarah, Anne and Mary Munt, children of Humphrey Munt. The question was

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whether by the will of John Markland, Munt, as his Executor, was entitled to the surplus of his personal estate, amounting to near 6,000*l.*, or was only a trustee for Markland's daughters. The Lord Chancellor Jeffreys declared that the words in the will amounted to a declaration of trust. His Decree was reversed by the Lord Commissioners on 5 Nov. 1689. It is evident that Markland only intended a Trust, as he left the Executors 10*l.* apiece for their care. Pray the last Decree may be reversed, and proceedings below stayed. *Signed* by Appellants; *Countersigned* Geo. Hutchins and H. Finch. [Reported this day from Committee for Petitions. (Pet. Book, 11 Dec. L. J., XIV., 369.) The cause was heard on 23 Oct. 1690. *Mr. Finch* and *Mr. Jennings* argued for Appellants. *Sir Charles Porter* (for Respondent Bernard): There was in Markland a constant and settled resolution to dispose of his estate as he has done in his will. He gave Mr. Aylmer instructions to draw the will, and these instructions are just as the will is. He said, "I will give them no more, for I have been cheated of £800." He bade Munt not speak of what advantage he was to have by the will. This we can prove by many witnesses. *Mr. Williams* (for Respondent Bernard): He agreed to leave a blank in the will for enlarging the legacies. The legacies amount to £1,500, which is charged on the estate. He devises £200 a year to one Kellet. The will is read. The Speaker then reported, and the House reversed the Decree, L. Newport and L. North and Grey dissenting. (MS. Min. L. J., XIV., 529.)]

Annexed:—

- (a.) 11 Jan. 1689-90. Petition of Appellants. Their Appeal was brought against Humphrey Munt, who is since dead, without having answered. Pray they may amend the Appeal by inserting the names of John Barnard, *alias* Barney, Munt's Assignee and Administrator, and of Munt's children. L. J., XIV., 410.
- (b.) 22 March 1689-90. Petition of same. Respondents have taken advantage of the dissolution of Parliament to prosecute Petitioners at law. Pray that a time may be limited for Respondents to answer, and that proceedings below may be stayed. L. J., XIV., 435.
- (c.) 3 April 1690. Affidavit of John Barnard, the Respondent, that he lives at Thorpe in Essex; that Anne Munt lives at Troyford in Sussex, and Sarah Munt at Halsted in Essex; that Anne is of age, and neither she nor Sarah have been served with the Order to answer, which was not served upon himself till Monday. [Sworn this day, and *endorsed* as read this day; but there is no entry of it.]
- (d.) 8 April 1690. Petition of Appellants. Respondents are delaying to answer in order to prosecute Petitioners after the Session. Pray for stay of proceedings until the Appeal has been decided. L. J., XIV., 454.
- (e.) 30 April 1690. Answer of John Barnard, Assignee and Administrator of Humphrey Munt, deceased, and Robert, Samuel, Sarah, Anne and Mary Munt, his children, by the said Barnard, their Guardian. John Markland made a will leaving his daughters only 200*l.* a piece, though Munt urged him to leave them more. Markland intended Munt to have the surplus, which is not so large as alleged. Pray that the Appeal may be dis-

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missed with costs. *Signed* by Respondents; *Countersigned* Charles Porter and Tho. Filmer. *Endorsed* as brought in this day. (f.) 5 May 1690. Petition of John Barnard and the children of Humphrey Munt, deceased, for whom he is guardian. Prays that the hearing may be put off for a fortnight, on the ground of insufficient notice, and that John Osborne, Timothy Newborough, and Wm. Masemore may be summoned as witnesses at the hearing. *Signed* by Barnard. *Noted*, *Rejected*, L. J., XIV., 485.

(g.) 6 Oct. 1690. Petition of Appellants, complaining of Respondent's delays and praying for a day for hearing. L. J., XIV., 516.

187. Dec. 16. Van Mildret v. Wright.—Writ of Error, &c., brought in this day. L. J., XIV., 373. *Parchment Collection*.

188. Dec. 16. L. Cornwallis' Privilege (Barthropp).—Petition of Edmund Wythe, James Robinson, Richard Harding, and John Richers. Petitioners, being very poor and destitute, lately became under bailiffs, and being fresh and unskilful in their office, with ignorant presumption arrested William Barthorpe, servant to Lord Cornwallis, at the suit of Miles Bayspoole. Make their submission and pray to be released from custody. L. J., XIV., 372. *See also* MS. Min., 25 Nov.

Annexed :—

(a.) 22 Jan. 1689–90. Petition of Miles Bayspoole, praying to be discharged. L. J., XIV., 422. *Almost in extenso*.

189. Dec. 16. E. Pembroke's creditors (Baden, &c.).—Petition of Andrew Baden, William Vyner, and three hundred more of the creditors of Philip, late Earl of Pembroke. For several years past Petitioners had been prosecuting Thomas E. Pembroke, Henrietta, Countess Dowager of Pembroke; Lady Charlotte Herbert, Earl Philip's daughter, since married to George, Lord Jeffreys, Baron of Wemm, and E. Sunderland and L. Godolphin as Trustees for the Countess Dowager, for satisfaction of their debts. The late L. Chancellor Jeffreys made a decree in favour of the Lady Charlotte, which, owing to the Revolution, remained unexecuted. Petitioners intended to appeal to the Lords Commissioners, but as it was in time of Parliament, they are unsafe and unwilling to do so without leave. Pray leave of the House to proceed in Chancery, and that the Lords defendants to the cause will waive their privilege. *Signed* by Baden, Vyner, Tho. Roberts, John Higham, Wm. Fisher, Tho. Bromfeild, John Davis, and Robert Glegge. *Endorsed*, Read 16^o Dec. 1689, and nothing done on it, because Peers as Trustees have no privilege. MS. Min.

190. Dec. 17. D. Grafton's Privilege (Terkill).—Petition of Thomas Syer, of Langham, Suffolk, Attorney at Law. Was arrested for suing Robert Terkill, a servant to the Duke of Grafton. Had expressed his sorrow to the Duke, who had promised to refer his letter to the House. Having a wife sick unto death, and seven children, prays to be set at liberty. L. J., XIV., 374. *See also* MS. Min., 29 Nov.

191. Dec. 17. Triennial Act Revival Bill.—Partly amended Draft* of an Act for the Preventing Inconveniences happening by the

* The additions in Select Committee are given in italics, the omissions in square brackets. The words represented by italics do not appear on the draft itself, but are inserted here from the Com. Book, being identified by the marginal references on the Bill.

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long intermission of Parliaments. Whereas by a Statute made in the 16th year of King Charles the 2^d entitled an Act for assembling and holding of Parliaments once in three years at the least, it is enacted that Parliaments shall not be intermitted or discontinued above the space of three years at the most, And whereas it is the undoubted right of the subjects of this Kingdom that Parliaments be frequently held, And whereas it has by experience been found that the long intermission of Parliaments hath produced sundry and great mischiefs to the Kings of England, the Church and Commonwealth, And whereas by other laws and statutes of this Realm the Parliament ought to be held every year once or more often if need require for redress of grievances and the maintenance of the laws, the Church and Government, but the appointing of the time and place for holding Parliaments hath always belonged, as it ought, to their Majesties and their Royal progenitors, Therefore for preventing the like mischiefs and inconveniences for the time to come and for clearing all doubts that may arise concerning the calling and sitting of Parliaments, their Majesties do now think fit to declare and enact the methods and ways that Parliaments shall be hereafter convened and holden, and also their Majesties do now think fit to appoint the times and places for the future holding of Parliaments and their continuance.

And be it enacted by the King and Queen's Most excellent Majesties by and with the advice and consent of the Lords Spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, that neither this present Parliament nor any other future Parliament shall continue in being above the space of three whole years, to be accounted from the first day of the first Session of every Parliament respectively that shall be called as is hereafter directed unto the full end and term of three years, and in case any Parliament that shall be hereafter called shall not be dissolved by their Majesty's their heirs and successors sooner than within the space of three years to be accounted as is aforesaid, then at the full end and term of three years to be accounted as aforesaid all future Parliaments respectively shall be and are hereby adjudged, enacted and declared to be ipso facto dissolved to all intents and purposes whatsoever by virtue of this Act.

And be it further enacted by the authority aforesaid that this present Parliament shall be ipso facto dissolved by virtue of this Act upon the last Saturday in the month of August, which shall be in the year of Our Lord God one thousand six hundred ninety and one, in case the King and Queen's Majesties shall not think fit to dissolve the same sooner.

And be it further enacted by the authority aforesaid that it shall be and is hereby adjudged and deemed to be the King and Queen's right at their pleasure when they shall see cause for it, to dissolve, or prorogue this present, or any other succeeding Parliament that shall be in being at all times that their Majesties shall think fit, except in such cases and at such times as is hereafter in this Act provided and enacted that Parliament shall actually sit without any interruption by dissolution or prorogation, or by adjournment, except de die in diem, or from Saturday till Monday.

And be it further enacted by the authority aforesaid that in case their Majesties that now are, their heirs and successors shall at any time dissolve this present Parliament before the last Saturday in the month of August which shall be in the year of our Lord God 1691, or shall at any time dissolve any future Parliament before the time limited that such future Parliament shall be ipso facto dissolved by virtue

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of this Act, then the Lord Chancellor, or Lord Keeper or the Commissioner or Commissioners of the Great Seal for the time being shall within the space of *ten months and twenty* days after such dissolution issue out several and respective Writs by warrant from their Majesties their heirs and successors to him or them directed respectively under the Great Seal in the usual form to the several and respective peers of this realm, commanding every such peer that he be personally at the Parliament to be held at Westminster the day that their Majesties their heirs and successors respectively in their warrant shall direct, which day shall be within *forty* days after the [day of such dissolution], *issuing of such writs*, and shall also seal, issue forth and send abroad several and respective writs in the usual form by warrant from their Majesties, their heirs and successors to him or them directed respectively under the Great Seal to the several and respective sheriffs of the several and respective counties, cities and boroughs of England and Wales and to the Constable of the Castle of Dover, Lord Warden of the Cinque ports or his lieutenant for the time being, and to the mayor and bailiffs of Berwick-upon-Tweed and to all and every other officers and persons to whom writs have used to be directed for the electing of the knights, citizens, barons and burgesses of and for the said counties, cities, Cinque ports and boroughs of England and Wales respectively in the accustomed form to appear and serve in Parliament to be held at Westminster, the day that their Majesties their heirs and successors respectively in their Warrants shall direct, which day shall be within *the days* [after the day of such dissolution] *and time before mentioned*.

And be it further enacted by the authority aforesaid that in case this present Parliament shall be dissolved by their Majesties before the last Saturday in August 1691, or in case any other future Parliament shall be dissolved by their Majesties, their heirs and successors, before the time limited by this Act, that such future Parliament shall be ipso facto dissolved by virtue of this Act, and no warrant shall come from their Majesties, their heirs and successors to the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal respectively, within the [space of days] *time as aforesaid* after the said dissolutions respectively, then, in such case, the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being shall ex officio and is hereby required, subject to such pains and penalties as are hereafter expressed upon the neglect or refusal thereof, to seal, issue forth, and send abroad several and respective writs under the Great Seal to the several and respective Peers of this realm, commanding, in the King's name, every such peer that he be personally at the Parliament to be held at Westminster the [day after days] *time and day aforesaid* from and after such dissolution, and also the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being shall ex officio, and is hereby required subject to such pains and penalties as are hereafter expressed upon the neglect or refusal thereof, to seal, issue forth and send abroad several and respective writs under the Great Seal in the usual form to the several and respective sheriffs of the several and respective counties, cities, and boroughs of England and Wales, and to the Constable of the Castle of Dover, Lord Warden of the Cinque Ports, or his lieutenant for the time being; and to the Mayor and bailiffs of Berwick-upon-Tweed, and to all and every other officers and persons to whom writs have used to be directed for the election of knights, citizens, barons, and burgesses of and for the said counties, cities, Cinque Ports, and boroughs of England and Wales respectively to appear and serve in Parliament, to be held at Westminster the day [after days] *and time aforesaid*

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from and after such dissolution. And it is hereby enacted, adjudged, and declared that all such writs under the Great Seal as aforesaid shall be as valid, good, and of like force as if the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal had been authorized for sealing the same by their Majesties' warrant passed in due form of law.

And be it further enacted by the authority aforesaid, that a new Parliament shall be held at Westminster the second Monday of October next following the last Saturday in the month of August 1691, in case their Majesties shall not think fit to dissolve this present Parliament before the said last Saturday in the month of August, which shall be in the year of Our Lord God 1691, upon which said last Saturday in August aforesaid this present Parliament shall be ipso facto dissolved by virtue of this Act, and then the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being shall within six days after the aforesaid last Saturday in the month of August 1691, by warrant from their Majesties to him or them directed, respectively seal, issue forth and send abroad, several and respective writs to the several and respective Peers of this realm, commanding every such peer that he be personally at the Parliament to be held at Westminster the second Monday of October next following the aforesaid last Saturday in the month of August 1691, and shall also seal, issue forth, and send abroad several and respective writs by warrant from their Majesties to him or them directed respectively under the Great Seal to the several and respective sheriffs of the several and respective counties, cities, and boroughs of England and Wales, and to the Constable of the Castle of Dover, Lord Warden of the Cinque Ports, or his lieutenant for the time being, and to the Mayor and bailiffs of Berwick-upon-Tweed, and to all and every other officers and persons to whom writs have used to be directed for the electing of knights, citizens, barons, and burgesses of and for the said counties, cities, Cinque Ports, and boroughs of England and Wales respectively in the accustomed form to appear and serve in Parliament to be held at Westminster the second Monday of October next following the aforesaid last Saturday in the month of August 1691.

And be it further enacted by the authority aforesaid that, in case their Majesties their heirs and successors shall not think fit to dissolve any future Parliament before the time limited that it shall be ipso facto dissolved by virtue of this Act, then the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the great Seal for the time being shall within the space of *six* days after such dissolution by warrant from their Majesties their heirs and successors to him or them directed respectively seal, issue forth, and send abroad several and respective writs to the several and respective Peers of this realm, commanding every such peer that he be personally at the Parliament to be held *forty-six* days after such dissolution. And it is hereby enacted and declared that a new Parliament shall accordingly be held at Westminster and shall also seal, issue forth and send abroad several and respective writs by warrant from their Majesties, their heirs and successors to him or them directed respectively under the Great Seal to the several and respective sheriffs of the several and respective counties, cities, Cinque Ports, and boroughs of England and Wales and to the Constable of the Castle of Dover, lord warden of the Cinque Ports, or his lieutenant for the time being and to the mayor and bailiffs of Berwick upon Tweed and to all and other officers and persons to whom writs have used to be directed for the electing of knights, citizens, barons and burgesses of and for the said counties, cities, Cinque Ports and boroughs of England and Wales

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respectively in the accustomed form to appear and serve in Parliament to be held at Westminster *forty-six* days after such dissolution.

And be it further enacted by the authority aforesaid that in case their Majesties shall not think fit to dissolve this present Parliament before it shall be ipso facto dissolved by virtue of this Act as aforesaid, or in case their Majesties their heirs and successors shall not think fit to dissolve any future Parliament before the time limited by this Act that such future Parliament shall be ipso facto dissolved by virtue of this Act, and after such dissolutions respectively the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal respectively for the time being shall receive no warrant from their Majesties their heirs and successors within the space of six days, after the aforesaid last Saturday in August 1691 or within *six* days after any future Parliament shall be ipso facto dissolved by virtue of this Act, then in such cases the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being shall ex officio and are hereby required, subject to such pains and penalties as are hereafter expressed upon the neglect or refusal thereof to seal, issue forth, and send abroad within the space of *ten* days after the said last Saturday of August which shall be in the year of our Lord 1691, and within the space of *ten* days after any future Parliament shall be ipso facto dissolved by virtue of this Act respectively, several and respective writs under the Great Seal to the several and respective peers of this Realm commanding in the King's name every such peer that he be personally at the Parliament to be held, and which is hereby required to be held at Westminster the second Monday of October next following the last Saturday of August which shall be in the year of our Lord God 1691, and within *forty** days after the date of the Writ of Summons after any future Parliament shall be ipso facto dissolved by virtue of this Act respectively. And also the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal respectively shall ex officio, and is hereby required, subject to such pains and penalties as are hereafter expressed upon the neglect or refusal thereof to seal, issue forth and send abroad within the space of [days after the said last Saturday of August which shall be in the year of Our Lord 1691] *forty days after the date of the Writ of Summons* and within *ten* days after any future Parliament shall be ipso facto dissolved by virtue of this Act respectively, several and respective writs under the Great Seal in the usual form to the several and respective Sheriffs of the several and respective counties, cities, and boroughs of England and Wales and to the Constable of of the Castle of Dover, Lord Warden of the Cinque ports or his lieutenant for the time being and to the Mayor and Bailiffs of Berwick-upon-Tweed, and to all and every officers and persons to whom writs have used to be directed, for the election of knights, citizens, barons, and burgesses of and for the said counties, cities, Cinque Ports and boroughs of England and Wales respectively to appear and serve in Parliament to be held at Westminster within the space of *forty days after the date of the Writ of Summons* after any future Parliament shall be ipso facto dissolved by virtue of this Act or the second Monday of October next following the aforesaid last Saturday in the month of August which shall be in the year of our Lord God 1691 respectively. And it is hereby enacted, adjudged and declared that all such writs under the Great Seal as aforesaid shall be as valid, good, and of like force as if the Lord

* The amendment first proposed was to fill this and the next blank with ("fifty").
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Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal respectively had been authorized for sealing the same by warrant from their Majesties, their heirs and successors passed in due form of law, notwithstanding that the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being shall not receive any warrant or instructions, or shall in any ways be commanded to the contrary by their Majesties, their heirs and successors, anything in this Act or any other law to the contrary in any wise notwithstanding.

And as it is and has been always the undoubted right of their Majesties and their Royal Progenitors to appoint the time and place for the calling and holding Parliaments, their Majesties do now think fit to enact and declare by giving their Royal Assent to this Act which is in their highest capacity, the times and place of assembling and sitting of Parliaments, and also the methods by which Parliaments for the future shall be called and chosen in case the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal shall at any time hereafter neglect or refuse to issue out writs for the calling of the same as by this Act they are respectively directed and required by their Majesties by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled.

And therefore be it further enacted by the authority aforesaid that in case the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being, shall neglect or refuse to seal, issue forth, and send abroad several and respective writs under the Great Seal in the usual form to such peers and at such times as by this Act is required then, and in such case the several and respective peers of this realm shall and are hereby required, subject to such pains and penalties as are hereafter expressed upon neglect or refusal thereof, to be personally at the Parliament to be holden at Westminster, and which is hereby required to be held at Westminster [] days] the fortieth day by eight of the clock in the morning after the respective days that every respective Parliament should have been held, in case writs under the Great Seal by warrant from their Majesties, their heirs, and successors, or without warrants from their Majesties, their heirs and successors, as is by this Act directed, had been sealed, issued forth, and sent abroad to the several and respective peers of this realm by the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being as is before in this Act directed and required.

And it is further enacted by the authority aforesaid, that the Peers of this realm being so personally present as aforesaid, or any ten of them, shall and are hereby declared and enacted to be legally convened and assembled in Parliament to all intents and purposes whatsoever, with as full power and authority as if they had been respectively called by writ under the Great Seal for that purpose. And it is hereby further enacted that the Peers so assembled, or any ten of them, shall, by virtue of this Act, have full power from time to time, and at any time during such their assembly in Parliament, to make choice of one fit person as they shall think fit, to be their Speaker pro tempore, and such person so made choice of shall be, and is hereby declared to be, Speaker of the House of Lords pro tempore, and so to continue until the House of Lords assembled as aforesaid shall make choice of some other fit person as they shall think fit, and shall also have full power, by virtue of this Act, to punish all and every such Peer and Peers who shall refuse or neglect personally to appear at the time and place aforesaid [by fine and imprisonment as they, the Peers so assembled, shall think fit], for such neglect [or refusal.]

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And be it further enacted by the authority aforesaid that in case the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being, shall neglect or refuse to seal, issue forth, and send abroad several and respective writs under the Great Seal in the usual form to the several and respective sheriffs of the several and respective counties, cities, and boroughs of England and Wales, and to the Constable of the Castle of Dover, Lord Warden of the Cinque ports, or his Lieutenant for the time being, and to the Mayor and bailiffs of Berwick upon Tweed and to all and every Officers and persons to whom writs have used to be directed for the election of knights, citizens, barons and burgesses of and for the said counties, cities, cinque ports and boroughs of England and Wales respectively to appear and serve in Parliament and at such times as is by this Act required, then and in such case it is hereby enacted and declared by the authority aforesaid that the several and respective sheriffs of their several and respective counties shall cause ex-officio elections and returns respectively to be made for their several and respective counties by the freeholders of the respective counties who by the laws of this realm have right to elect one or more knight or knights according to the custom of each respective county of England and Wales respectively to appear and serve in Parliament in the same manner and form as if such respective sheriffs had been respectively authorized so to do by virtue of writs under the Great Seal to them respectively directed for that purpose as this Act does direct, and the Constable of the Castle of Dover, Lord Warden of the Cinque ports, or his lieutenant for the time being respectively, within the space of *forty* days after the respective days that every respective Parliament should have been held in case writs under the Great Seal by warrant from their Majesties their heirs and successors, or without warrants from their Majesties, their heirs and successors, as is by this Act directed had been sealed issued forth and sent abroad to the several and respective peers of this realm, sheriffs, Constable of Dover and Lord Warden of the Cinque ports or his lieutenant for the time being and also the several and respective sheriffs shall award and send forth their precepts to the several and respective cities and boroughs within their several counties and likewise to the said Cinque ports respectively, commanding them respectively in their Majesties' names, their heirs and successors, to make choice of such citizen and citizens, barons, burgess and burgesses to serve in Parliament and personally to appear, subject to such pains and penalties as are hereafter expressed upon neglect or refusal thereof, at the Parliament to be holden at Westminster [days] *the fortieth day* after the respective days that every respective Parliament should have been held, in case writs under the Great Seal by warrant from their Majesties, their heirs and successors, or without warrant from their Majesties, their heirs and successors, as is by this Act directed, had been sealed issued forth and sent abroad to the several and respective peers of this realm and to the several and respective sheriffs of England and Wales, Constable of the Castle of Dover and Lord Warden of the Cinque ports, or his lieutenant for the time being, and to the mayor and bailiffs of Berwick-upon-Tweed, which said cities, Cinque Ports and boroughs respectively shall within *ten* days after the receipt of such precepts respectively, make elections and returns respectively of such citizens, barons and burgesses as if writs for summoning a Parliament under the great Seal of England had issued and been awarded, subject to such pains and penalties as are hereafter expressed upon neglect or refusal thereof.

And be it further enacted by the authority aforesaid that in case the several and respective sheriffs shall neglect or refuse as they are

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respectively by this Act required, to cause elections and returns respectively to be made for the several respective counties by the freeholders of the respective counties as aforesaid at the times they are by virtue of this Act required so to do *ex officio*, and in case no such precept shall come unto the said Cities, Cinque ports, and boroughs respectively within the time herein limited, and in case any precept shall come as aforesaid, and no election and return shall be made thereupon within the time herein limited, then in all such cases elections shall be made of and for all knights, citizens, barons, and burgesses of and for all the counties, cities, Cinque ports, boroughs, and town of Berwick on Tweed respectively at such times and in such manner as is hereafter directed.*

For which purpose be it enacted by the King and Queen's Majesties, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, that in case their Majesties that now are—whom God long preserve—their heirs and successors, shall at any time think fit to dissolve this present Parliament or any other future Parliament, and that within the space of . . . days after such dissolution a new Parliament shall not actually be called and sitting by some or one of the methods or ways already by this Act directed, or in case their Majesties, their heirs and successors, shall not dissolve this present Parliament or any future Parliament, but that by virtue of this Act this present or any other future Parliament shall ipso facto be dissolved, and that within the space of . . . days after such dissolution a new Parliament shall not actually be called and sitting by some or one of the methods or ways already by this Act directed, then in either or any of such cases it is hereby enacted and declared, and be it enacted and declared by the authority aforesaid, that it shall and may be lawful from and after . . . days after such dissolutions or either of them as aforesaid, for the several and respective freeholders of the several and respective counties, who are qualified by the laws of the realm to elect one or more knight or knights of the several and respective counties of England and Wales to serve in Parliament, to meet upon the day that the County Court ought in course and without adjournment to be first held after the . . . days after such dissolutions aforesaid at the place where the assizes for the said county was last held, and then and there between the hours of eight in the morning and four in the afternoon the said freeholders shall agree upon, elect and choose one fit person, to be determined by the majority in case of dispute, who shall be a freeholder not under the value of fifty pounds per annum in the said county, to execute the office of sheriff only as to the business of the elections of knights, citizens, barons, and burgesses of the respective county wherein he shall be chosen. And it is further enacted by the authority aforesaid that such person so agreed upon shall be called and styled and shall style himself the Sheriff of Elections for the time being for the respective county wherein he shall be chosen. And be it further enacted by the authority aforesaid that in case such person so agreed upon and chosen shall refuse to act and do in all things as hereafter is directed, then the freeholders shall choose one other person for that purpose the next day in the same manner as aforesaid, and so every day until one shall be chosen who will perform and take an oath so to do all things that are hereafter directed. And be it

* On 27 Jan. the Select Committee, after considering and amending the Bill to this point, adjourned till the next day (Com. Book). The Prorogation, however put a stop to further proceedings. (L. J., XIV., 428.)

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further enacted by the authority aforesaid that such person so chosen and sworn as aforesaid shall be and is hereby empowered and required the next day after he shall be sworn to cause an election to be made by making proclamation for the same, between the hours of eight and ten of the clock in the morning, of one or more knight or knights according to the custom of each respective county of England and Wales, to appear and serve in Parliament at Westminster days after the dissolution of the last preceding Parliament; and it is hereby enacted that a new Parliament shall actually sit at Westminster from and after days after such dissolutions or either of them as aforesaid, which election of knights for the respective counties of England and Wales shall be performed by the said respective Sheriffs of Elections for the time being, and the freeholders of the respective counties in the same manner as if the respective sheriffs of the respective counties had caused such elections to be made by virtue of writs to them respectively directed under the Great Seal of England for choosing knights for the respective counties to serve in Parliament.

And be it further enacted by the authority aforesaid that within the space of days after such Sheriffs of Elections respectively for the time being shall be chosen and sworn, such Sheriffs of Elections respectively for the time being, shall issue out and send abroad several and respective precepts to the several and respective cities, Cinque ports, and boroughs within the respective counties wherein such Sheriffs of Elections for the time being shall be chosen, directed to the chief officer or officers of such cities, Cinque ports, and boroughs, commanding them or either of them respectively days after the receipt of such precept to cause elections to be made of such number of citizens, barons, and burgesses as of custom have been chosen and sent to serve in Parliament by the respective cities, Cinque ports, and boroughs in the respective counties of England and Wales, in the same manner as if such officer and officers had received precepts respectively from the sheriffs of the counties respectively by virtue of writs to them respectively directed under the Broad Seal for electing knights, citizens, barons, and burgesses of the several and respective counties, cities, Cinque ports, and boroughs of the several and respective counties of England and Wales.

And be it further enacted by the authority aforesaid that the persons respectively employed to carry such precepts by the respective Sheriffs of Elections for the time being shall before the delivery of the same to the respective officer or officers to whom such precepts shall be directed, publicly in the daytime make proclamation in three several places within the respective cities, Cinque ports, and boroughs, and give notice of the days that is appointed for the elections of such citizens, barons, and burgesses respectively, as in the said precepts respectively are directed, to the end that all citizens and burgesses and all other persons who have right to elect and send members to Parliament, and all other persons therein concerned, may have timely notice of the days that such elections shall respectively be made. And be it further enacted by the authority aforesaid, that in case the officer and officers of the respective cities, Cinque ports, and boroughs, after the receipt of such precepts respectively shall neglect or refuse to proceed to elections at or before ten of the clock upon such day as the said precept shall direct of such citizens, barons, and burgesses respectively as of custom have been chosen and sent to Parliament by the respective cities, Cinque ports, and boroughs within the respective counties of England and Wales, subject to such pains and penalties as are hereafter expressed upon the neglect or refusal thereof, then in such case it shall and may be lawful, by virtue of this

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Act, for the citizens and burgesses and other persons who have right to elect and send members to Parliament by themselves, and without any other warrant, upon the day that is directed by the said precepts and after ten of the clock in the morning of the same day to make choice, and are hereby required to make choice of such citizen and citizens, barons, burgess, or burgesses, respectively, and shall make return thereof to the said Sheriff of Elections for the time being within days after such elections.

And be it further enacted by the authority aforesaid, that in case the Officer or Officers for the respective cities, Cinque ports, and boroughs within the respective counties of England and Wales as aforesaid shall proceed to elections as is before directed and shall not make any return of such election to the Sheriffs of Elections for the time being, then the electors by themselves shall make such return to the Sheriff of Elections for the time being, as the proper officer for the time being ought to have done by virtue of this Act.

And be it further enacted by the authority aforesaid that the Sheriffs of Elections for the time being respectively shall and are hereby required respectively to give certificates under their hand and seals respectively to the knight and knights respectively of the elections of them made respectively as aforesaid, and also duplicates of such returns as shall be made to them, the Sheriffs of Elections for the time being respectively, from the officers or electors respectively of the several cities, Cinque ports, and boroughs respectively, or of such as shall come within the times limited by this Act to their hands respectively to the several and respective citizens, barons, and burgesses who shall be returned as aforesaid to the said Sheriffs of Elections respectively for the time being of the several and respective counties of England and Wales, upon demand made by the several and respective citizens, barons, and burgesses chosen respectively.

And be it further enacted by the authority aforesaid that all and every the respective Sheriffs of Elections aforesaid shall appear and be in Westminster Hall by eight of the clock in the morning the day that every respective Parliament ought to set by virtue of this Act, when such Sheriffs of Elections for the time being shall be chosen by virtue of this Act, and produce their certificates of election of the several and respective knights to serve in Parliament chosen as aforesaid, and also the several and respective returns to them made of the several and respective citizens, barons, and burgesses of the several and respective cities, Cinque ports, and boroughs as aforesaid to any six or more Peers of this realm, which shall by order of the Peers then assembled in Parliament in the usual place in the King's Palace, go down into Westminster Hall, and there receive the several and respective certificates and returns made by the several and respected Sheriffs of Elections as aforesaid, and upon the receipt thereof, the Peers so sent down by order of the Peers in Parliament assembled, shall then and there, as aforesaid, tender the Oaths to be taken that are required to be taken by all members of both Houses in Parliament, in an Act entituled an Act* made in the first Sessions of this present Parliament in the first year of the Reign of our sovereign Lord and Lady King William and Queen Mary; and the said Peers so to be sent down, or any of them, into Westminster Hall, as aforesaid, are hereby authorized and required to tender the same to every such knight, citizen, baron, and burgess, whereof certificates or returns

* A blank is left here. The words to be supplied are "for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament."

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shall be produced respectively of their several and respective elections, as aforesaid. And in case such Sheriffs of Elections respectively shall neglect or refuse to appear at the aforesaid time in Westminster Hall, or shall be hindered from so doing by sickness or other infirmity, to be judged of, if reasonable, by the then House of Commons, elected as aforesaid, and to be that day assembled, then in such case the knights, citizens, and burgesses elected as aforesaid, shall produce their certificates of their respective elections and returns obtained from the said Sheriff of Elections by virtue of this Act, which shall be as effectual for their being sworn respectively as if the respective Sheriffs had produced their respective certificates and returns.

And be it further enacted by the authority aforesaid, that from and after the time that such knights, citizens, barons, and burgesses as aforesaid shall be sworn as aforesaid, every such knight, citizen, baron and burghess shall be and are hereby enacted to be to all intents and purposes as legally and duly elected, returned, and sworn as if such knights, citizens, barons, and burgesses had been elected by virtue of writs sealed, issued forth, and sent abroad by the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal for the time being respectively, and returned by the several and respective sheriffs of the several and respective counties into the Crown Office, and were sworn in the accustomed manner respectively, and shall each of them be liable to such pains, penalties and censures for his and their not appearing then in Parliament, as if he or they had been elected and chosen by virtue of writs under the Great Seal of England, and shall be likewise subject unto such further pains, penalties and censures, as by the rest of the knights, citizens, and burgesses assembled in the Commons' House of Parliament, he or they shall be adjudged unto, death and torture always excepted.

And be it further enacted by the authority aforesaid, that immediately after such knights, citizens, barons and burgesses shall be sworn as aforesaid, they shall and every of them go and assemble in the Commons' House of Parliament at Westminster, and being so assembled the said knights, citizens and burgesses are hereby authorized and required to make choice and declare and from time to time and at all times during such their assembly in Parliament one of themselves to be Speaker for the said knights, citizens and burgesses of the House of Commons assembled in the said Parliament during such time as the said House of Commons shall think fit, which said Speakers and every of them, as well for the aforesaid House of Peers as for the said House of Commons respectively shall by virtue of this Act be perfect and complete Speakers for the said Houses respectively, and shall have as full and large power, jurisdiction and privileges to all intents and purposes as any Speaker or Speakers of either of the said Houses respectively heretofore have had or enjoyed.

And be it further enacted by the authority aforesaid, That all Parliaments hereafter to be assembled by virtue of this Act and every Member thereof shall have and enjoy all rights, privileges, jurisdictions and immunities as any Parliament summoned by writ under the Great Seal of England or any Member thereof might or ought to have had.

And be it further enacted by the authority aforesaid that no Parliament henceforth to be assembled shall be dissolved or prorogued within fifty days at the least after the time appointed for the meeting thereof, unless it be by consent of their Majesties, their heirs and successors, and of both Houses in Parliament assembled, and that neither the House of Peers nor the House of Commons shall be adjourned except *de die in diem* and from Saturday till Monday next following within fifty days at the least after the meeting thereof, unless it be by the free consent of

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both the said Houses respectively, any thing in this Act or any other law contained to the contrary in any wise notwithstanding.

And be it further enacted by the authority aforesaid, that if at any time hereafter the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal of England respectively shall neglect or refuse to do and perform at any time and at all times that this Act requires all and every thing and things that by virtue of this Act all Lord Chancellors, Lord Keepers, and Commissioners of the Great Seal for the time being are respectively by this Act required, then he or they so offending shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the Statute of Provision and Premunire made in the sixteenth year of King Richard the Second, and shall from henceforth be disabled during his life to sue and implead any person in any action real or personal, or to make any gift, grant, conveyance or other disposition of any his lands, tenements, hereditaments, goods, or chattels which he hath to his own use either by act executed in his life time or by his last will and testament, or otherwise, or to take any gift, conveyance or legacy to his own or any other's use, or take any benefit or any gift, conveyance or legacy to his own or any other's use.

And be it further enacted by the authority aforesaid that all sheriffs, constables of the Castle of Dover and Lord Wardens of the Cinque ports respectively who shall not respectively perform his or their duty or duties enjoined by this Act, shall lose and forfeit the sum of one thousand pounds respectively to be recovered as is hereafter directed, that is to say, to the use and behoof of such persons as shall be chosen by virtue of this Act to be Sheriffs of Elections respectively within such counties respectively wherein such forfeitures respectively shall be made, in recompense for the pains and charges that such respective Sheriffs of Elections for the time being shall sustain and be at in executing his or their office, as by this Act he or they are required, and to be levied upon the goods and chattels of such sheriffs, constable of the Castle of Dover and Lord Warden of the Cinque ports respectively for the time being who shall have neglected or refused to have executed any or all thing or things that such sheriffs, constables of the Castle of Dover and Lords Wardens of the Cinque ports respectively by virtue of this Act ought to have done and executed, by the chief constable or constables of the hundred whereof such goods and chattels shall or may be found, by virtue of warrants respectively under the hand and seal of the Speaker of the House of Commons to such chief constable or constables directed, and sale shall be made of such goods and chattels as shall be so distrained within days after such distress shall be made, and the said sum of one thousand pounds shall be by the said chief constables paid to the said Sheriffs of Elections aforesaid arising by such sale, rendering the overplus to the owner after the said chief constables shall have deducted reasonable charges for the distress and sale. And be it further enacted that the said Speaker of the House of Commons is hereby authorised and required within days after such House of Commons shall be sitting, upon petition to the said House of Commons by the said Sheriffs of Elections, to sign and seal such warrants respectively without requiring any fee for the same. And in case goods and chattels shall not be found whereof to make such distress, then by virtue of the same warrant and this present Act so authorizing the same, the said chief constable shall by force or without force give possession to the said Sheriffs of Elections respectively of all the estate real and personal of such sheriffs, constables of the Castle of Dover and Lords Wardens of the Cinque ports respectively who shall have neglected or refused to do,

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and perform their duty as aforesaid by this Act directed respectively, and the said Sheriffs of Elections respectively shall hold, possess and enjoy such estates real and personal respectively until such Sheriffs of Elections shall have raised the aforesaid 1,000*l*. respectively out of the rents and profits of the same.

And be it further enacted by the authority aforesaid that in case the aforesaid Sheriffs of Elections or the messengers by them sent with precepts respectively to the cities, Cinque ports and boroughs of England and Wales respectively, or the Chief Officer or officers of the several and respective cities, Cinque ports and boroughs of England and Wales, or either of them shall neglect or refuse to do and perform all and everything and things directed and required by this Act to be done and performed by the said Sheriffs of Elections, messengers and chief officers respectively of the several and respective cities, Cinque ports and boroughs of England and Wales, then such Sheriffs of Elections, messengers and chief officers respectively of the several and respective cities, Cinque ports and boroughs of England and Wales so offending shall be subject unto such pains, penalties and fines respectively as they shall be adjudged unto respectively, death and torture always excepted, by the knights, citizens and burgesses of the House of Commons that shall be next assembled in Parliament after such offence or offences shall be committed.

And be it further enacted by the authority aforesaid that the Lord Chancellor, Lord Keeper, Commissioner or Commissioners of the Great Seal of England respectively shall take a solemn Oath upon the Holy Evangelist for the due issuing of writs under the Great Seal according to the tenor of this Act, which Oath shall be in these words following viz. You shall swear that you shall and will truly and faithfully issue forth and send abroad all writs of summons to Parliament for both Houses, at such time and in such manner as is expressed and enjoined by an Act of Parliament made in the first year of the reign of King William and Queen Mary, entitled An Act for the preventing inconveniences happening by the long intermissions of Parliaments, which Oath is forthwith to be taken by the present Commissioners of the Great Seal and to be administered by the Clerk of the Crown to every Lord Chancellor, Lord Keeper, Commissioner and Commissioners of the Great Seal, and that none of the said officers respectively shall henceforth execute any the said offices before they have taken the said Oath after the passing of this Act entitled an Act for the preventing inconveniences happening by the long intermission of Parliaments.

And be it further enacted by the authority aforesaid, that all and every the Sheriffs of Elections respectively shall forthwith after they shall be elected as aforesaid, take a solemn Oath upon the Holy Evangelist for the due issuing of precepts according to the tenor of this Act and for duly executing and performing all other things that by this Act they are respectively required, which Oath shall be in these words following, viz. You shall swear that you will to the best of your power cause due elections to be made of knights to serve in Parliament for this county, and that you will make returns of such persons as you shall judge to be so duly elected and none others, and that you will well and truly perform and execute the duty and office of a Sheriff of Elections according to the directions of an Act of Parliament made in the first year of the reign of King William and Queen Mary, entitled An Act for preventing inconveniences happening by long intermission of Parliaments, which Oath shall be administered by any one of the freeholders then present of the respective counties that shall be appointed so to do by the Sheriff of Elections so chosen as aforesaid, in the presence of any

12 or more of the said freeholders then present who is hereby required so to do.

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And that such elections, precepts and returns shall be had and made at such times by such persons and in such manner as before in this Act is expressed and declared, according to the true intent and meaning of this law, any writ, proclamation, edict, act, restraint, inhibition, order or warrant to the contrary in any wise notwithstanding; Be it further enacted by the authority aforesaid That in case any person or persons shall be so hardy to advise, frame, contrive, serve or put in execution any such writs, proclamation, edict, act, restraint, inhibition, order or warrant thereupon, then he or they so doing or offending shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the Statute of Provision and Premunire made in the sixteenth year of King Richard the Second, and shall from thenceforth be disabled during his life to sue or implead any person in any action real or personal, or to make any gift, grant, conveyance or other disposition of any of his lands, tenements, hereditaments, goods or chattels which he hath to his own use, either by act in his life or by his last will or otherwise, or to take any gift, conveyance or legacy to his own use or to take any benefit of any gift, conveyance, or legacy to his own use.

And be it further enacted by the authority aforesaid that this statute shall be publicly read yearly at every General Sessions of the Peace to be held next after the Epiphany and every Assizes then next ensuing by the Clerk of the peace or his deputy and the Clerk of the Assizes for the time being respectively, and if they or either of them shall neglect or refuse to do the same accordingly, then such party so neglecting or refusing shall forfeit the sum of one hundred pounds for every such neglect or refusal, the moiety whereof to be recovered in any of his Majesty's Courts of Record by any person or persons that shall sue for the same by action of debt, bill, plaint, or other information, wherein no essoin, protection or wager of law shall be allowed, or any more than one imparlance. [Read 1^a this day* (L. J., XIV., 374). In C. W. H. on 21 Jan. 1689-90, the preamble was postponed, the first two enacting clauses were read and agreed to, the third was postponed, and the fourth was read. Upon debate of filling up the blanks in the four enacting clauses, an amendment was proposed, and also that a clause be drawn that one Commissioner of the Great Seal shall issue writs if the other does not consent. Then the Bill was referred to a Select Committee. (MS. Min., L.J., XIV., 421.) The Bill was considered in Select Committee (E. Stamford in the Chair) on Jan. 24, 25, and 27, and the amendments marked in the text of the Bill above were made. (Com. Book.) The Bill dropped in Committee with the Prorogation on 27 Jan. L. J., XIV., 428.]

Annexed:—

- (a.) Draft amendment as follows:—"that within three years after the time of the dissolution of this present Parliament, or of any subsequent Parliament, whether it be by virtue of this present Act, or by the King and Queen or their heirs and successors, in all time to come, then the L. Chancellor, &c. shall, within the space of three years," [There is no mention of this proposed amendment in Com. Book.]

* For the previous Bill of 19 Nov. on this subject, which was superseded by this one, and for the proceedings connected with that previous Bill see No. 171.

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192. Dec. 19. *Dod v. Burrowes*.—Petition of Anne Dod widow, Magdalen Johnson widow, Robert Colbatch, Anne his wife, Sarah Dod, Robert Cooper, Priscilla his wife, Frances Dod, Charlton Hill, John Hill and Rowland Hill. Thomas Lochard left an estate worth 400*l.* a year to his younger son Thomas, giving his elder son an annuity only of 60*l.*, by reason of his extravagance. Thomas the son, having no issue, left the estate to his elder brother, declaring in his will that he did so only to the intent that it should go to his name and blood, and charged it with several legacies, under condition of his not disputing the Will, otherwise the estate to go to the Petitioners, his sisters Anne Dod and Magdalen Johnson, and his nieces Anne, Sarah and Priscilla. William refused to pay the legacies and disputed his brother's Will, claiming the estate as heir to his father; and he made a Will leaving it to David Atkins and Thomas Burrowes, mere strangers, but burdened it with the legacies. Atkins and Burrowes having sued Petitioners in Chancery to compel them to accept the legacies and release their right to the estate, Petitioners brought a Cross-bill, setting forth that William had forfeited the estate by breaking the conditions of the Will, and praying to have the benefit of the devise over by the Will of Thomas. The Lords Commissioners on 4 Dec. 1689, decreed that William should pay the legacies bequeathed by Thomas with interest, and that on payment thereof, Petitioners should release their rights to William's devisees. Appeal from this decree, and pray that Thomas Burrowes may be ordered to answer. Anne Dod had no legacy left her, and Frances Dod and the Hills disclaimed all title to the estate. L. J., XIV., 376. *Signed* by Appellants except Frances Dod and the Hills; *Countersigned* Geo. Hutchins and John Clapham. [Read this day on report from the Committee for Petitions. (Pet. Book, 18 Dec. L. J., XIV., 376.) The Cause was first heard, and the Decree reversed on 30 April, *Serjeant Hutchins* and the *Attorney-General* appearing for Appellants, and *Sir W. Whitelocke* and *Mr. Finch* for Respondent. (MS. Min. L. J., XIV., 480.) For subsequent proceedings *see* below.]

Annexed:—

- (a.) 31 Dec. Petition of Thomas Burrowes, Gent., praying for a fortnight or three weeks further time to answer, as both he and Mr. William Grosvenor, his Solicitor, are in Shropshire. L. J., XIV., 400.
- (b.) 14 Jan 1689–90. Answer of same. The estate was worth only 285*l.* a year. William's annuity was 40*l.* He never refused to execute his brother's will, but being in bad health, and surviving his brother only two months, was unable to do so before his death. He had often expressed his resentment against his relatives, and his intention to leave his property to Respondent and Mr. Atkins his stepfather, who had shown William great kindness. He had left his lands in Wollerton to Respondent, charged with about 700*l.* legacies. His Will was upheld in the Consistory Court of the Bishop of Lichfield and Coventry, after a full hearing. Respondent offered to pay the legacies, if Appellants would release their title. The Lords Commissioners declared that the devise over by Thomas was only in the nature of a penalty, and was relievable in equity in case William had failed to perform the conditions. Prays that the Appeal may be dismissed with costs. *Signed* by Respondent; *Countersigned* William Whitelocke and Thos. Vernon. *Endorsed* as brought in this day.

- (c.) 24 March 1689-90. Petition of Appellants for a day for the hearing which had been prevented by the Dissolution. *Signed* by Anne Dod and Colbatch. L. J., XIV., 436.
- (d.) 16 May 1690. Petition of Appellants, except Frances Dod and the Hills. Respondent and his agents, though served with the judgment of the House, have refused to deliver up possession, and the Lords Commissioners have refused their writ of assistance, as the judgment did not specify to whom possession was to be restored. Pray that Burrowes and his agents may be ordered to obey the judgment. L. J., XIV., 500. [On 17 May Sir Anthony Keck and Sir William Rawlinson, two of the Lords Commissioners of the Great Seal, appeared at the bar to answer the complaint of this Petition. *The Speaker*: You know the Order. *Sir W. Rawlinson*: I hope we have not disobeyed. There is no such direction. If it be said we should execute this decree, there has been a motion for a writ of assistance, and that we cannot give. If your Lordships had commanded that the Chancery shall execute this Order, what had we to do? We must execute the Decree in the form of the Court. We could not by our own authority do this. We should have violated our oaths, and the rules of the Court oblige us to the contrary. We hope that you will give us a rule for the future. I never appeared before at a bar as a criminal. We in no way contested your Order. The words of restoring is the complaint. If this Order had been in relation to the Petitioners—in Chancery, we never gave away possession. They came to the Court and did not move us to restore possession. Here was a motion for a writ of assistance, not for an Order. We cannot at first word or first motion turn men out. Possessors are regarded in point of law. If they had moved for an Order and by degrees they might have come to a writ of assistance. *Sir A. Keck*: We have no latitude in Chancery to go out of rule. If we had done it, what would have been the consequence? The House then ordered Petitioners to attend, with their Counsel, on the 20th.—On 23 May *the Speaker* acquainted Counsel for the parties of what the Commissioners had said, as follows:—As to the not restoring the possession, the Commissioners say the Order is short. It directs not to whom it should be restored. At the hearing in Chancery there was nothing of possession. No Order in Chancery to take away possession; but when the Lords had made the Order, if they had gone regularly to have the Court give possession—They moved for a writ of assistance, which they say is very irregular. There ought to be a Writ of Execution, then an Attachment, then an Injunction, then a Writ of Assistance; and this the Appellant moved for. It is not usual for them in Chancery to order possession. He having title at law, need not come to them for possession. *Sir Francis Winnington*: It is said by their Lordships that the Order does not say to whom possession is to be restored. I think the Order is as full as can be. If a Court of Justice says it must be restored, it must be to the party from whom it is gone. Can the profits be accounted for to any but those to whom it is wanting? It is pursuant to the Decree. The question is only the execution of the Judgment. It may be said that it does not appear how the possession was. There were Cross-Bills. The possession was turned out not by the Chancery, but by force, pending the Cause. As to whether we moved for a Writ of Assistance, that is not worth contending. Let us have

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- what we had, and we will go on as gradually as they please. I propose to them that your Lordships shall restore all the possession they have got since the suit pending in Chancery. *Sir Bartholomew Shower* (for Appellants): The Decree in Chancery is in effect to turn us out. In common sense it is to be restored to us. *Mr. Finch* (for Respondent): This comes for want of stating the case. Some agreed to take their money. The Court at the hearing decreed we should pay the legacies. We had possession, but your Lordships have made a new Decree, not at all in the Cause. We had the possession before we brought the Bill in Chancery. The possession was under a title at law. Your Lordships made an Order giving possession instead of restoring. There was one room wherein Anne Dod was; she voluntarily quits the one room. If your Lordships order the possession, you destroy our title at law, and decree more than they ask for. The Speaker then reported, and the House confirmed their Order of 30 April. (MS. Min., L. J., XIV., 506)].
- (e.) Copy of Judgment of the House, dated 30 April 1690. L. J., XIV., 480. *In extenso*. Appended to preceding.
- (f.) Affidavit of Thomas Dicken of Drayton in Hales, Salop, Gent. that he served preceding Order on Mrs. Elizabeth Atkins at her house at Fordehall by reading it to her and showing her the original through a glass window &c., she refusing to open the door, and that Anne Dod demanded possession of the house, which Mrs. Atkins refused to give up; and he makes the same statement with regard to John Caudland and Roger Cadman, who were in possession of the house at Wollerton. Sworn 7 May 1690, and appended to (d.) above.
- (g.) 19 May 1690. Petition of Respondent praying that at the further hearing appointed for the 23rd he may be further heard by Counsel on the merits of the Cause, and put in proofs omitted at the former hearing. L. J., XIV., 502.
- (h.) 29 Oct. 1690. Petition of the Appellants, Anne Dod, Magdalen Johnson, Robert Colbatch, Anne his wife, Sarah Dod, and Priscilla Cooper widow. The Respondent has refused to deliver up possession of part of the estate, and has caused one William Burrowes, his lessee, to serve ejectments on Petitioners' tenants. Petitioners applied to the Commissioners of the Great Seal for an Injunction, which was refused, and Respondent at Shrewsbury assizes has obtained a verdict against them on the same evidence as before, the Judgment of the House being refused as evidence for Petitioners. Pray that the Commissioners may be ordered to grant the Injunction, and that proceedings on the verdict may be stayed. L. J., XIV., 534. [Evidence was given at the Bar this day in support of the Petition. MS. Min.]
- (i.) 17 Nov. 1690. Answer of Thomas Burrowes to preceding. Respondent has done nothing in opposition to their Lordships' Judgment, which deprived him only of the benefit of the Decree appealed from, not of his Common Law rights. Appellants had assented to the trial at Law, which was only with regard to lands never in his possession, and therefore not affected by the Judgment of the House. This had never been tendered as evidence, nor refused to be received as such. Prays that no Injunction may be granted to stay his proceedings at common law. *Endorsed* as brought in this day.
- (k.) 19 Nov. 1690. Petition of same Appellants as in (h.), praying for a day for hearing. L. J., XIV., 558. [Counsel

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- were heard on 27 Nov. on this Petition and Annexes (*h*) and (*i*). *Sir W. Williams* (for Appellants): It is a complaint of proceedings at law. The Order was offered to the Court, and yet the Court would proceed. Witnesses were then heard to prove this. *Solicitor-General* (for Respondent): That which is prayed by the Appellant is an injunction. The case stands upon the Will of William Lochard. This title at law is unquestionable. *Mr. Finch* (for Respondent): We submit that their title at law is not under any title at equity. Now the man looks into his case and the Will, and says, Why need I have come into Chancery? I have a good title at law. He is now just as if his Bill had been dismissed. This question is more than an original cause, and is a matter of the greatest consequence. Our title at law is by the Will of William, and the question at law is on the Will. If we had had no title at law we should never have gone to law. *Sir W. Williams* having replied and the Speaker reported, the House was moved to hear Mr. Justice Eyre. *Eyre, J.*: I was in no way interested in the Order. I told the Counsel that if it was in the Lords' Order, they ought not to proceed; but the Counsel told him it was not within the Order. The resolution to attach Burrowes was carried by 9 votes to 7, L. North and L. Cornwallis being the Tellers. MS. Min.]
- (*l.*) 1 Dec. 1690. Petition of Thomas Burrowes. Is in custody of Sir Thomas Duppa, Knt., for a contempt of the House committed through ignorance. Begs pardon, has paid 3*l.* 6*s.* 8*d.* for the Attachment Fee and is very poor. Prays to be discharged. L. J., XIV., 573.
- (*m.*) 17 Dec. 1690. Petition of same. Has obeyed the House by delivering up possession, and has abandoned proceedings upon a verdict at law which he has obtained, as the House construed it a contempt. Prays for leave to prosecute his right at law, which is not forfeited by the reversal of a Decree he once had. L. J., XIV., 595. [On debate of this Petition this day, the Judges were asked whether, in case his Bill had been dismissed in Chancery, he would have been debarred from going to law. *Holt, C. J.*: I conceive he may. The debate was adjourned by 11 votes to 9, V. Weymouth and L. Cornwallis Tellers. (MS. Min. See also Note to (*ab.*) below.)]
- (*n.*) Affidavit of same, sworn 3 Dec. 1690 before Jo. Edisbury, that Appellants are in possession of all the Estate devised to him. Appended to preceding.
- (*o.*) 17 Dec. 1690. The State of the Case, giving the proceedings before the House from the presentation of the Appeal to the Judgment of 27 Nov. 1690. [Delivered in by the Clerk and read this day. L. J., XIV., 590, 595.]
- (*p.*) 18 Dec. 1690. Petition of same Appellants as in (*h.*) It is false that Petitioners are now in possession. Great destructions are made upon the buildings by those in possession for Burrowes. Pray to be heard by Counsel at the Bar. L. J., XIV., 596. [At the hearing on the following day, on the point whether Burrowes ought to have leave to try his title at law, *Mr. Finch* (for Burrowes): The Court said the Defendants (Appellants) should accept their legacies. Upon this they appealed. The Appeal complained only of the heir's right. You have reversed the Decree. If the Chancery had dismissed the Bill, then how would it have stood? We come to go to law. We lay under your displeasure for going to law. Now we come to pray we

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may try our title at law, which could not be in a Court of Equity without assuming other powers. We hope there is nothing can hinder us. *Mr. Jones* (on the same side) states the facts. *Sir William Williams* (for Appellants): By their Bill in Equity they say they have no right in law. Your Lordships are Judges upon the whole matter of the Appeal. Then they deliver declarations in Ejectment in the Vacation. We come in October and complain that this was a violation of your Judgment. All the allegations in fact were in judgment in Parliament, and properly too. We have not possession. They are pulling down the houses. Will your Lordships re-hear the Cause? No. But here is a device—I can call it no less. This is to falsify the Lords' Judgment in Parliament. No one Court of Equity, or other Court, will suffer their Judgment to be impeached by an inferior Court. *Mr. Clarke* (on the same side): As long as the Bill was depending in Chancery they had no remedy at law. It is as your Lordships have twice adjudged before—that the possession be restored and the profits be accounted for. Counsel heard in reply. Counsel withdrew. The Speaker reported. Judges asked whether, if Burrowes have a trial at law, and should recover, his verdict shall take away any equity Dod has? *Holt, C. J.*: I conceive he may go into equity after trial. Since it is said by the Judges the party may have equity after trial, it is Ordered &c. as in L. J., XIV., 598. (MS. Min., 19 Dec. 1690).]

- (q.) 23 Nov. 1691. Petition of Burrowes. Pursuant to leave obtained from the House, Petitioner had recovered the estate at common Law; yet Appellants, by colour of the Order of the House of 30 April 1690, prosecute him to account in the Court of Chancery for the profits of his own estate. Prays the Court of Chancery may be directed to discharge him from accounting, and he be left to recover the mesne profits received by the Appellants, and damages for waste. L. J., XIV., 659. See Note to (ab.) below.
- (r.) 7 Dec. 1691. Answer of same Appellants as in (h.) to preceding. Though pretending a title at law distinct from any tried before the House, Burrowes in the King's Bench had insisted upon nothing but his title under the Will, which had already been adjudged by the House. Have spent over 700*l.* in these proceedings. Signed by Appellants and countersigned Wi: Williams, Fra: Winnington. Endorsed as brought in this day.
- (s.) 8 Dec. 1691. Petition of Burrowes. The above Answer is false and frivolous. Prays for a speedy day for hearing, on the point as to which party shall be accountable to the other for the mesne profits. L. J., XIV., 678.
- (t.) 18 Dec. 1691. Petition of same Appellants, to same effect as (r.) above. Pray to have possession and profits restored to them. L. J., XIV., 693.
- (u.) 29 Dec. 1691. Answer of Burrowes to preceding. The Petition is false and inconsistent. Petitioner's right is only under the Will, and has never been decided by the House. The point is simply whether the proceedings in Chancery to charge him with an account should not be discharged. Signed by Respondent and countersigned Tho: Jones. Endorsed as brought in this day.
- (w.) 31 Dec. 1691. Petition of Appellants Anne Dod, Johnson and Colbatch, for a day for hearing. L. J., XV., 10.

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(x.) 14 March 1692-3. Petition of same Appellants as in (h.) Burrowes is not prosecuting his last Petition. Pray it may be dismissed. L. J., XV., 287.

(y.) 10 Nov. 1693. Petition of Burrowes. Had not prosecuted his Petition as the parties had been treating for an accommodation; but the Appellants, without notice to him, had obtained the dismissal of his Petition on the last day of the Session, which was a surprise to him, and had moved the Lord Keeper to proceed upon the account, which the latter had refused to do until he knew the pleasure of the House. Prays his Petition may be retained, and a speedy hearing appointed. L. J., XV., 297. See Note to (aa.).

(z.) Affidavit of same, sworn before Rich: Holford on 6 Nov. 1693, in support of the statements of preceding Petition and appended thereto.

(aa.) Affidavit of William Manlove, Burrowes' Solicitor, sworn before Ad: Ottley on 3 May 1693, giving an account of the negotiations for a compromise, appended to (y.) [The above Petition was referred to the Committee for Petitions, before whom, on 14 Nov., *Sir Tho. Powys* (for Burrowes) prays the Petition may be retained. *Sir W. Williams* (for Dod) denies there was any treaty between the parties. *Sir Francis Winnington* (on same side) offers an Affidavit of Colbatch's, which is read. Both sides own there was no day appointed for hearing the Cause last Session. *Sir Tho. Powys*: We are content that both the Petitions be dismissed. *Sir Wil: Williams* acquiesces. (Pet. Book.)]

(ab.) 18 Nov. 1693. Petition of same Appellants as in (h.) for postponement of the hearing, as their witnesses are in Salop, and that Hugh Squire, Esq., Thomas Dicken, Nathaniel Baskerville, Gent., and Philip Buckley, may be summoned as witnesses. L. J., XV., 301. [At the hearing on 2 Dec. 1693, *Sir Thomas Powys* (for Burrowes): The question now is whether he shall now render an account of the personal estate. We apply to Your Lordships that we may enjoy the estate. *Mr. Finch* (on same side): They say they relied on the Decree, and made no defence. Our legal title was never in question upon our second petition. Our title was affirmed to be good (by leave of the House). They come to make us account for the profits of our own estate. *Sir Wm. Williams* (for Dod): Your Lordships are asked to reverse your own Judgment. *Sir Francis Winnington* heard on same side. *Mr. Finch* and *Sir Thomas Powys* heard in reply, and the question put that the House do reverse that part of the Order of 30 April 1690 (L. J., XIV., 480) wherein Burrowes is to account for the profits of the estate; and it is Ordered that Thomas Burrowes shall be discharged from the words in the Judgment of this House of the 30 April 1690, "and the profits be accounted for," this House having given an Order for a trial at law, and Burrowes having tried his title at law. (MS. Min., 2 Dec. 1693.)]

193. Dec. 19. *Sir Caesar Wood v. D. Southampton*.—Petition and Appeal of *Sir Caesar Wood alias Cranmer*, Knt. In 1671 the Appellant's uncle, *Sir Henry Wood*, made a treaty with *Sir Thomas Clifford*, on behalf of the King, for a marriage between his only child *Mary* and *Charles*, Duke (then Earl) of *Southampton*, son of *Barbara Duchess of Cleveland*. *Mary* was then aged 7, and the Duke 11. It was agreed that

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the marriage was not to take place until Mary was 16. If she then accepted the Duke, or, in case of his death, his next brother George, Lord Palmer, the King would settle estates worth 2,000*l.* a year upon her for jointure, all Sir Henry Wood's estates in Suffolk being entailed on Mary and her husband and their issue male. If Mary refused to marry either the Duke or his brother, 20,000*l.* was to be paid out of Sir Henry's estate to the disappointed suitor, and the estate was to go first to his brother Dr. Thomas Wood and issue, and then to his sister Dame Mary Chester and her son, the Petitioner, and his sons, Henry and Charles, on condition that they took the name of Wood. After Sir Henry's death in 1671, his sister Dame Mary Chester, his daughter's Guardian, took her tolive with her, but she was taken away by the contrivance and practice of the agents and relations of the Duchess of Cleveland and privately married to the Duke, the children being aged 7 and 11 respectively. They were not married again after Mary attained her sixteenth year, and indeed she died without issue on or about 15 Nov. 1679 or 1680; and the 2,000*l.* a year was never settled upon her, so that the treaty of marriage was never properly carried out, and the estates, on the death of Dame Mary Chester, properly belonged to Petitioner. Nevertheless the Duke took out letters of Administration of Mary's property, and obtained a decree from L. Chancellor Jeffreys awarding him the estate. Petitioner appeals against this Decree, and prays the Duke may be ordered to answer, and proceedings stayed against Petitioner and Sir Stephen Fox and others who have part of the estate in their hands. *Signed* by Appellant; *Countersigned* Wi. Williams,—Folkes and W. Marriott. [Read this day on report from the Committee for Petitions. (Pet. Book, 18 Dec. L. J., XIV., 376.) The Cause was heard on 14 April 1690. *Solicitor General* (for Appellant): It is an Appeal from a Decree made by L. Chancellor Jeffreys, upon an account of the personal estate of Sir Henry Wood. Sir Henry was willing she should be married before 16. This we take to be contrary to the intent of the Bill, and in this we conceive the Decree is erroneous. Care is taken by the Deed that she should be particularly directed. In case of the death of Lady Chester, he takes care for other guardians. It is most plainly contrary to the Deed. *Sir Ambrose Phillipps* (for Appellant): 2,000*l.* was laid out in purchase of lands, and now it is decreed to the Duke. It ought to go according to the Deed. *Serjeant Hutchins* (for Respondent): The Duke is well entitled to the lands. If she should refuse to marry the Duke, he was to have 20,000*l.* after 16 years. The age of 16 is in point of the forfeiture. We are not before your Lordships upon the age of 16. We are simply for the profits of the land. *Mr. Trevor* (for Respondent): By the will it is devised to her for life. The will does not abridge the Deed. Lady Chester was to be Executrix until she lived to the age of 21 or married. It is plain that this power could continue no longer than the Executrixship lasted. The decree is, that in regard they have not laid out this, therefore we decree this. The Court is justified in this decree. The *Speaker* then reported, and the House affirmed the Decree. (MS. Min., L. J., XIV., 464.) See 1 *Vernon* 338 and *Shower's Cases* in Parliament 83.]

Annexed:—

(a.) 31 Dec. Answer of Charles, Duke of Southampton. Dr. Thomas Wood, now Bp. of Coventry and Lichfield, who stood before Appellant in remainder, should have been made a party to the Appeal. A second marriage took place between Respondent and Mary Wood after the age of consent, on 29 June 1676. Respondent had obtained a Decree against the Bishop for

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- 3,797*l.* 5*s.* 6*d.* and against Sir Stephen Fox for 1,073*l.* 10*s.* 3*d.* on account of the estate; but he cannot obtain from Appellant a discovery how much of the estate came into Lady Chester's hands. The Appeal is vexatious. *Signed* by Respondent; *Countersigned* Geo. Hutchins. *Endorsed* as brought in this day.
- (b.) 7 Jan. 1690. Petition of Appellant for a day for hearing. L. J., XIV., 404.
- (c.) 3 April 1690. Petition of Appellant for a day for hearing and stay of proceedings, the hearing having been prevented by the dissolution. L. J., XIV., 447.
- (d.) 12 April 1690. Petition of same, offering to write to the Bishop of Lichfield to persuade him to waive his Privilege, provided the hearing be deferred till he receives the Bishop's answer. Besides, one of the Petitioner's Counsel, Sir Wm. Williams, is in the country. *Endorsed.* Nothing done on it. MS. Min. [On 3 April the Duke appears to have moved that the Bishop should waive his privilege. On the 12th, Thomas Marriott swore he had waived it below, and, after debate, it was at first moved that the Bishop having waived his Privilege in the Courts below in this cause, therefore he shall have no Privilege allowed in the future. Then it was ordered as in L. J. MS. Min. of dates.]

194. Dec. 19. Papists Toleration Bill.—Amended* draft of an Act for exempting their Majesties' Popish subjects from the penalties of certain Laws. Be it enacted by the King and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled and by authority of the same, That every Popish Recusant convict or not convict who shall take the oath hereafter mentioned, shall from the time of taking the said oath be absolutely freed and discharged of and from the penalty or forfeiture of twenty pounds by the month now due to the King and Queen's Majesties from every Recusant convict for not repairing to Divine Service and forbearing the same, contrary to the tenor of the laws and statutes heretofore made and provided in that behalf; neither shall any part of the lands, tenements or hereditaments of any Popish recusant having taken the said oath be liable to any seizure for not repairing to Divine Service.

And be it further enacted by the authority aforesaid that it shall and may be lawful for every Popish recusant after he or she shall have taken the said oath, to reside, continue and be within the cities of London and Westminster or within ten miles of the same, neither shall such recusant be confined within five miles of his habitation, any law or statute to the contrary notwithstanding.

And be it further enacted by the authority aforesaid, that every Popish recusant that shall take the said oath as aforesaid, shall from thenceforth have the like or same exemption from all penalties as by one Act of the first Session of this present Parliament, intituled An Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws, were granted to Protestant Dissenters, so as the same extend not to the public exercise of the Popish religion.†

* The additions are shown by italics, and the omissions by square brackets.

† This clause is struck through on the draft, but was not omitted when the Bill was first reported. It was probably struck out by Justice Dolben, on recommendation.

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Which oath followeth in these words:

"I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary; and I do swear that I do from my heart abhor, detest, and abjure that doctrine and position that princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects or any other whatsoever."

Which said oath shall be taken before any Justice of the Peace, who is hereby authorized *and required** to administer the same *to such persons as shall offer themselves to take it.**

Provided always and be it enacted by the authority aforesaid, That every Popish recusant which shall not before the *fourth* day of *May* next ensuing take the said oath before some Justice of the Peace, and cause a certificate thereof to be entered amongst the Records of the Sessions of the Peace at the next Quarter or General Sessions of the Peace, to be held for the county, city, riding, parts or liberty where the said oath shall be taken, such person, from the time of such his neglect or omission to take the said oath shall† be taken, esteemed, and adjudged a Popish recusant convict to all intents and purposes.

[Read 1^a this day (L. J., XIV., 375). On 9 Dec. a Committee‡ was appointed to draw an Address praying the King to enforce the laws against Papists, to inspect former laws, and to draw a Bill to remedy them where defective. (L. J., XIV., 365.) This Committee met the same day and desired Justices Dolben and Eyre to draw an Address upon the Act for removing Papists out of London (1 W. & M. c. 9), and upon the debate. The draft Address was brought to the Committee next day by Justice Eyre, and was amended and reported. (Com. Book, 9, 10 Dec.)—On 13 Dec. the House ordered, on motion, that the Committee already appointed to draw a Bill to remedy the defects of former Acts have power to draw a Bill that every Papist that will take the oath of Fidelity may have ease from the laws in force. (L. J., XIV., 370.) In Committee of 14 Dec. it was proposed (1) that the Roman Catholics who shall take the Oath of Fidelity shall be exempted from the penalties of the Law relating to their going out of London, and (2) that both Houses of Parliament address the King to issue out his Proclamation to free the town of all Papists that will not take the Oaths of Fidelity; and a form of Address was begun to be drawn.—On 16 Dec. this Address was drawn and ordered to be reported. On consideration of Heads for a Bill, it was proposed (1) that such of the Papists as will take the Oath of Fidelity shall not have two-thirds of their estate liable to be forfeited; (2) That the Papists [in and about London] that shall take the said Oath may stay in London and not be confined within 5 miles of their houses; (3) that such Papists shall have the same [liberties] *exemption* that Dissenters have *from all penalties granted* by the Act of Toleration, but not the like public exercise of religion. These three heads were agreed to, and Justice Eyre was ordered to attend the Committee the next day to receive directions to draw a Bill upon them. On 17 Dec. the Committee, on reconsidering the above Heads, agreed (1) That such Papists as will take the Oath of Fidelity and the first paragraph of the 2nd oath, leaving out the

* The words in italics are interlined in Justice Dolben's handwriting. They were not added when the Bill was first reported.

† In place of the remaining words of the Bill, Justice Dolben, on recommitment substituted the first amendment given in Annex (c) below.

‡ The Chairman of this Committee was E. Rochester, that of the Committee on the Bill L. Cornwallis. (Com. Book.)

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words "impious and heretical," shall not have the two-thirds of their estates liable to be forfeited. Then the Committee divided on the motion (2) That such as will take the said Oaths shall have the liberty of residing in London, and not be confined within five miles of their own houses, which was carried by 5 votes to 1. Then the third Head, as amended above, was agreed to, and it was also agreed (4) that such of them as will not take the Oaths as above, shall be esteemed as Papists Convict to all intents and purposes. These four Heads were given to Justice Dolben and Baron Nevill to draw a Bill, who accordingly, on the 19th, offered to the Committee the above Draft Bill, which was amended and reported. (Com. Book of dates.) The Bill was read 1st the same day (L. J., XIV., 375), and committed on 30 Dec. to a Select Committee, (*ib.* 398) who amended it on 31 Dec. by fixing the 4th May as the date for taking the Oath, and by adding a Proviso for Advowsons (*a.*), and reported it the same day (L. J., XIV., 399). The House, on report, recommitted the Bill in order to draw Clauses to be added, viz.:—A Clause to make the Bill temporary; That, instead of filling the blank with the fourth of May, a Clause be brought in, to empower the Justices of the Peace to tender the Oaths to all the Papists in and about the town; and that the Papists be forced to attend the said Justices, to take the said Oaths. That a Clause be added, that the Oaths being tendered to the Papists, upon their refusal to take them, they shall, by a penalty, be forced immediately to go out of the town, and not go above five miles from their houses. (L. J., XIV., 399.)—The Committee, on recommitment, after agreeing on certain heads, as in Annex (*b.*), desired Justice Dolben and Baron Nevill to draw Clauses upon them, and Justice Dolben took the Bill with him for that purpose. (Com. Book 2 Jan.)—On 4 Jan. the Judges accordingly offered some Clauses (Annex (*c.*)), which were read, and after debate, the Committee adjourned till the 8th (Com. Book 4 Jan.), when they met only to adjourn to the 10th (*ib.* 8 Jan.). No further proceedings are recorded.]

Annexed:—

- (*a.*) 31 Dec. Proviso A. as follows: "Provided that nothing in this Act be construed or taken to extend to the altering or taking away the power or right of presentation vested in the Chancellors and Scholars of the respective Universities of Oxford and Cambridge to any benefice, prebend or ecclesiastical living belonging to any Popish recusant or *reputed Papist*; but that the same still continue as the same are vested and settled by an Act lately made, entitled An Act to vest in the two Universities the presentations of benefices belonging to Papists, anything in this present Act contained to the contrary notwithstanding. [Added in Committee this day at the end of the Bill. (Com. Book.) The proviso is in the handwriting of C. Baron Atkyns, with the exception of the amendment in italics, which is written by the Clerk.]
- (*b.*) 2 Jan. 1689–90. Heads agreed to this day by the Committee on re-commitment, of clauses to be added to the Bill. They are as follows:—(1) That a Clause be drawn to oblige all Papists or reputed Papists throughout England to tender themselves to the Justices of Peace or one of them, to take the Oath mentioned in this Act, which Oath the said Justices of Peace are hereby empowered and required to administer. Provided that whosoever shall refuse the said Oath but shall repeat and subscribe the Declaration against Transubstantiation shall not be reputed a Papist, the said Subscription to be registered in the next

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Quarter Sessions. (2) That no Papist shall stay within 10 miles of London or go five miles from their houses that shall not take the said Oath or subscribe the said Declaration. (3) That every Papist or reputed Papist neglecting or refusing to take the said Oath or subscribe the Declaration, shall forfeit 100*l.* to the informer *toties quoties* till he shall obey all things required by this Act, and shall also suffer six months' imprisonment. (4) That because the words "reputed Papists" are subject to misconstruction, it be declared and enacted, that every person who shall repeat and subscribe the said Declaration, shall not be reputed a Papist, nor fall under any of the penalties imposed upon Papists or reputed Papists by this Act. (5) That this Act continue two years and no longer. [Justice Dolben and Baron Nevill were desired to draw clauses upon the above heads against the next meeting, and Justice Dolben took the Bill home with him to fit such clauses thereto. Com. Book.]

- (c.) 4 Jan. 1689-90. Clauses drawn by Justice Dolben on the above Heads, as follows:—(1)* "forfeit the sum of one hundred pounds, to be recovered by any person to his own use, who will sue for the same in any Court of Record by action of debt, bill, plaint or information, in which suit no essoign, protection or wager of law shall be allowed, and shall also suffer six months' imprisonment without bail or mainprise." (2) "Provided always that this Act shall continue in force for two years and no longer." (3) "Provided always and be it enacted by the authority aforesaid that every person *above the age of sixteen years* of whatever persuasion, who shall not before day of next ensuing take the said Oath or subscribe and repeat the Declaration mentioned in the 30th year of King Charles the Second, in an Act intituled An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament, shall not be permitted to stay in London nor within ten miles of the same, nor to travel five miles from their dwelling houses in the country, upon pain of forfeiting the sum of 100*l.*, *to be recovered by any person who will sue for the same in any Court of Record by action of debt, bill, plaint or information, in which suit no essoign, protection or wager of law shall be allowed, and shall also suffer six months' imprisonment without bail or mainprise.*" [Read and debated this day. (Com. Book.) In the handwriting of Justice Dolben, except the words in italics, which are added in the clerk's hand.]

195. Dec. 20. Norwich Court of Conscience Bill.—Commons' engrossment, marked with the Lords' amendments,† of an Act for erecting a Court of Conscience in the City of Norwich. § I. Whereas it has been found by long experience that the erecting of a Court for recovery of small debts and relieving of poor debtors in London under the value of forty shillings has been of great benefit and advantage to the poorer sort of freemen and inhabitants of the said city, and has prevented many great mischiefs and inconveniences that would otherwise have fallen upon them by the charge of arrests and other process and other pro-

* This first Clause or Amendment is marked to come in after ("shall") at the end of the bill.

† The omissions proposed by Lords' Committee are noted by square brackets, additions by italics.

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ceedings in law ; and forasmuch as the City and County of the City of Norwich, in the County of Norfolk, and the liberties thereof is of large extent and very populous, consisting of many poor freemen, artificers, labourers and others inhabiting therein, amongst whom, for want of the like good order and establishment, divers vexatious suits for divers debts and in several actions upon the Case upon Assumpsits and otherwise have been and are commenced and prosecuted as well in the Courts at Westminster as in other Courts or places, which has been and is the occasion of much more expense to the parties than the respective debts and causes of action for which they sue have amounted to, to the ruin of them, their wives and children, and by means thereof great charges to the said city for their support and maintenance have been contracted and occasioned ; for remedy thereof, Be it enacted, &c., That there be a Court, to be commonly called or known by the name of a Court of Request or Conscience, for relief of the poorer sort of people in small debts and actions upon the case in and for the said City and County of the City of Norwich and the Liberties thereof erected and established, and such Court is hereby erected and established within and for the said City and County of the said City and the Liberties thereof, to be held and have continuance for ever ; And that the Mayor, Aldermen, Sheriffs, Citizens, and Commonalty in Common Council assembled for the time being, or the major part of them, whereof the Mayor and six Alderman to be seven, shall and are hereby empowered and required from time to time once in every year to nominate, elect and choose such and so many persons as they shall think fit, not being under the number of twelve, and whereof six at least to be Aldermen and the rest Common Councilmen [or citizens] of the said City, who, together with the Mayor or one of the Aldermen of the same City for the time being, shall be and are hereby enacted, declared and appointed to be Commissioners for the holding the said Court of Request or Conscience as hereafter is expressed, and to continue Commissioners as aforesaid for the space of twelve Calendar months from the time of their choice and from thence till others shall be from time to time chosen in their steads.

§ II. And it is further enacted that* [Thomas Lombe, of the said City of Norwich, Gentleman, shall be Register and Clerk of the said Court, so long as he shall well and truly demean himself in the execution of the said office ; And that the said Thomas Lombe is to nominate and appoint his Deputy and Beadle or Beadles under him, to be approved of by the said Commissioners or the major part of them, and in case of removal upon lawful conviction of any misdemeanor or decease of the said Register or Clerk, that] the Mayor, Aldermen, and Common Council of the said City for the time being shall have full power and authority to nominate, elect and appoint such persons as they shall think fit to be Register or Clerk and Beadle or other officer or officers of and for the said Court, and them to remove and displace from the said offices or employment when and as often as they shall see cause.

§ III. And be it further enacted by the authority aforesaid, That the said Commissioners or any three or more of them, whereof the Mayor or one Alderman of the said City to be one, shall and are hereby authorised and required from time to time to meet and assemble themselves on such day or days in every week and in such place or places within the said City as shall be appointed and ascertained by the Mayor, Aldermen, Sheriffs and Common Councilmen of the said City for the time being, or the major part of them, whereof the Mayor and six

* The amendment that follows was disagreed to on Report. MS. Min., 16 Jan. 1689-90.

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Aldermen to be seven; And the said Commissioners or any three or more of them, whereof the Mayor or one Alderman as aforesaid to be one, shall and hereby have full power and authority to hear and determine all matters of debt and actions upon the case upon Assumpsits and otherwise (other than as herein-after is mentioned) not amounting to forty shillings debt or damages, to be brought before them according to the purport, true intent and meaning of this Act.

§ IV. And be it further enacted by the authority aforesaid, That every person and persons inhabiting or that shall inhabit within the said City and County of the said City or any the Liberties thereof or thereunto belonging, whether free or not free of the said City, which now hath or hereafter shall have any debt or debts, sum or sums of money not amounting to the sum or value of forty shillings due or owing unto him, her or them by any person or persons that doth or shall inhabit within the said City or County of the said City or Liberties thereof (whether free or not free of the said City) shall and may cause such debtor or debtors to be warned or summoned by the Beadle or other officer of the said Court hereby erected by writing left at the house or place of abode of such debtor or debtors, or by other reasonable warning or notice to be given to the said debtor or debtors to appear before the said Commissioners of the said Court of Conscience or any three or more of them to be holden as aforesaid (whereof the Mayor or one Alderman to be one); And that the said Commissioners or any three or more of them as aforesaid, whereof the Mayor or one Alderman to be one, shall have full power and authority, by virtue of this Act, from time to time to set down such Order or Orders to be made between such party and parties complainants and his, her or their debtor or debtors, defendants, touching such debts or actions upon the Case upon Assumpsits or otherwise as aforesaid, not amounting to the full value of forty shillings in question before the said Commissioners as they shall find to stand without equity and good conscience in a summary way and with or without adjournment, not holding themselves to the exact or usual forms or methods of the Common Law or other Courts of Justice; And the succeeding Commissioners shall proceed in the causes which were depending before their predecessors, and make Orders therein as if commenced before themselves, all which said Order or Orders, to be made as aforesaid, shall be final and conclusive to all persons therein concerned, their Executors and Administrators; nor shall any Writ of Error, Certiorari, Appeal or process in Law or Equity lie or be allowed for the removal, stay or reversal of the same; All such their Orders to be registered in a Book or books fairly written, to be kept in the said Court, and as well the Plaintiff as Defendant to be bound thereby and to observe and keep the same in all points. And for the due proceedings therein, it shall and may be lawful for the said Commissioners or any three or more of them, whereof the Mayor or one Alderman as aforesaid to be one, to minister an Oath to the Complainant or Defendant, and also to such witnesses as shall be produced on behalf of each party touching the matters in question or relating thereto, if the said Commissioners or any three or more of them, whereof the Mayor or one Alderman to be one, shall so think fit.

§ V. And be it further enacted by the authority aforesaid, That before any of the said Commissioners or any other Commissioners to be hereafter chosen or appointed in pursuance of this Act, shall enter upon the execution of the authorities herein contained, he and they shall take the Oath following before the Recorder or Steward of the said City for the time being, who are hereby impowered to administer the same; that is to say:

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I, A.B., do promise and swear that all such matters or causes as I shall order or determine by virtue of an Act of Parliament for erecting a Court of Conscience in the City and County of the City of Norwich, I will order and determine with Justice and Equity, according to the best of my knowledge and understanding. So help me God.

§ VI. And be it further enacted by the authority aforesaid, That if any such creditor or debtor, after warning given to him, her or them, in manner and form before in this Act mentioned, by any officer of the said Court of Conscience, shall, without some just and reasonable cause or excuse, allowed by the said Court, refuse to appear in the said Court or before the said Commissioners or any three or more of them as aforesaid, or shall not perform such Order as the said Commissioners shall set down for or concerning such debts as aforesaid, or the payment or allowance of any costs or damages for or in respect of the same, That then, upon Oath thereof made before the said Commissioners or any three or more of them as aforesaid, which Oath they have hereby power to administer, it shall be lawful for the Beadle or other officer or officers of the said Court, by order of the said Commissioners or any three or more of them as aforesaid, to levy such debt or debts, damages or money by the said Court awarded or ordered to be paid, by and out of the goods and chattels of such creditor or debtor, Plaintiff or Defendant, by distress and sale of the same, returning the overplus, if any be, to the party or parties, and if sufficient of the goods and chattels of such party or parties cannot be found within the jurisdiction of the said Court, whereby or whereon such debt or debts, costs or damages so awarded shall or may be levied, raised and satisfied, then it shall be lawful for such officer or officers of the said Court, by order of the said Commissioners or any three or more of them as aforesaid, to carry and convey such party or parties to any prison or prisons within the said City or Liberties thereof, there to remain without bail and mainprize until he, she or they shall perform and fulfil the Order and Decree of the said Court; And if any person or persons inhabiting or that shall inhabit within the said City and County of the said City of Norwich aforesaid, or any of the Liberties thereunto belonging, shall at any time after the first day of [January] *March* next ensuing, commence or prosecute any action or suit in any of the Courts at Westminster or in any other Court (except the Court hereby established) against any person inhabiting or residing, or that shall inhabit or reside within the said City or County of the said City or any the Liberties thereof or thereto belonging, for any debt or sum of money due upon contract, promise or otherwise, which upon the trial shall be found not to amount to the value of forty shillings over and above costs, no judgment shall be entered of record upon any such verdict where the debt or damages shall be found at less than forty shillings besides costs of suit; and if any judgment shall be entered thereon, such judgment shall be and is hereby declared null and void, and also the Defendant in any such action shall have his full costs of the said suit, to be taxed by the said Court or their proper officer where such action shall be tried and paid him by such Plaintiff in the said Cause, and shall have execution or remedy for the same, any law or custom to the contrary in anywise notwithstanding.

§ VII. Provided always, That this Act or anything therein contained shall not extend to any debt for rent or upon lease of lands or tenements, nor to any real contracts, nor to any other debt that shall arise by virtue or reason of any cause concerning testaments, matrimony or other

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things properly belonging to the Ecclesiastical Court, albeit the same be under forty shillings, anything before herein contained to the contrary notwithstanding.

§ VIII. Provided always, and be it enacted, That the fees that the Register or Clerk of the said Court for the time being shall take, be such and no other than what are hereafter appointed (that is to say): For every Complaint, *2d.*; For every Appearance, *2d.*; For every Order, *4d.*; For every Precept or Warrant to commit to prison, *6d.*; For every Warrant for seizing and disposing of goods and chattels pursuant to this Act, *6d.*; For every Satisfaction acknowledged upon an Order, *4d.*; For every Search, *2d.*; And that the Beadle or other Officer of the said Court for the time being shall take no more than *4d.* for warning every person, nor more than *4d.* for serving every precept or warrant, any law or usage to the contrary notwithstanding.

§ IX. And to the end due execution may be had of this Act and due attendance given by the Commissioners, so to be from time to time elected as aforesaid, Be it further enacted by the authority aforesaid, That in case any Alderman, Common Councilman or Citizen shall, after due notice given him that he is elected a Commissioner as aforesaid, refuse or neglect for the space of one week after such notice, to take the said Oath and act as a Commissioner accordingly, he shall forfeit the sum of *5l.* to the use of the poor of the said City, to be recovered by any action, bill or plaint in the name of the said Mayor, Aldermen, Sheriffs and Commonalty of the said City, besides costs of suit, wherein no protection, wager of law, privilege or injunction shall be allowed.

§ X. And be it further enacted by the authority aforesaid, That no Commissioner or Commissioners who shall execute the powers and authorities by this Act given, shall be liable, for or by reason of such execution, to any of the penalties mentioned in an Act made in the five and twentieth year of the late King Charles the Second for preventing of dangers which may happen from Popish recusants. *Parchment Collection.* [Brought from the Commons this day (L. J., XIV., 377); amended on report, but rejected the same day on third Reading (*ib.*, XIV., 415). A Bill for the same purpose, but differing from the above, was passed in 1701. 13 Will. III. c. 16 in Long Calendar.]

Annexed:—

(a.) 16 Jan. 1689–90. Lords' Amendments made on 9 Jan. and reported this day. Com. Book 9 Jan.

196. Dec. 20. E. Devonshire and others (Subornation of Witnesses).—Information of Robert Cragg, before the King and Council at Whitehall, produced this day by Mr. Bridgeman, a former Clerk of the Council, before the Committee appointed on 7 Dec. to examine persons to prove the endeavouring to suborn witnesses against the L. Steward (E. Devonshire), E. Stamford, E. Macclesfield and L. Delamer (L. J., XIV., 364). It is as follows:—About the end of February or the beginning of March last, Mr. Disney asked me to go into Holland of a message, and after two or three days' consideration, I told him if I knew or liked the business, and might be paid for my trouble and charges, I would go, and he took me to the Devil tavern, and told me I must go over to the Duke of Monmouth, for here was news in England that Argyll was making great preparations to go and reduce Scotland, to know how matters stood with him, or whether he was concerned with the Scots, or engaged in the design; for all his friends here in England understood nothing of his intention, and that

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there was no account from him from the time of the late King's death until this time, and he was desired to send word by me what his intentions were. I told Mr. Disney that I knew not the Duke of Monmouth, nor anybody about him, and I told him I thought I was a very improper messenger to go of such an errand, for how should the Duke be persuaded that I came from his friends, who had no acquaintance with me, nor knowledge of me. To that he told me I should be directed to a person in Amsterdam, who should satisfy the Duke so far that I should take no care of that, for there should be care taken before I came there, that the Duke should not scruple in the least to discourse with me. Accordingly I went from hence in the beginning of March and came to Amsterdam to Mr. Dare's, where I was directed, and told him I had a message from England to the D[uke] of M[onmouth]; he told me that he was not in town, neither would be in a week or 10 days; but what I had to say I might tell him, or stay until the Duke came to town. I refused to tell him, but withal I could not stay so long until the D[uke] came there. And then Mr. Dare carried me to Mr. Forgisson [Ferguson], and said I might tell him, for he knew all the Duke's mind and design, which I accordingly did; that was, I asked him how the Duke was engaged or inclined with the Scots. He told me that there was a very good understanding between the Duke and the Earl of Argyll, and that the Earl of Argyll was preparing with all speed to go for Scotland, with arms and ammunition, and would be ready to sail in a month's time,—this was, as near as I can guess, about the seventh or eighth of March,—and that the Duke of Monmouth was preparing with what strength he could to go for England, and was to go fourteen days after the Earl of Argyll was sailed from Holland, and if possible to be in England before the coronation of his now Majesty, or at least before the Parliament sat down, and therefore Mr. Forgisson [Ferguson] desired me to make haste over and to press all the Duke's friends to send him all the supply of money they could without delay, that he might be enabled to make a suitable provision for arms and ammunition for his coming over, for there seemed nothing to be wanted but money to buy ships and provisions for his coming. And accordingly, I came over and acquainted Mr. Disney of the whole, as is here related, and he seemed to be extreme glad to hear that the Scots and English and the Duke had so good an understanding. I told him that the Duke did expect a speedy supply of money. He answered he could not then say anything to that, but in a day or two he should be able to say more and do what he could. I met him two days after, and then he told he had told some gentlemen what I had said, and they were extremely troubled that the Duke should take such sudden and rash measures before he had acquainted his friends with it, and wondered he should send nobody over to them before to acquaint them with his intentions and that it was their opinion, and prayed that he would not so much as think of coming for England, but rather join with his strength with the Scots and go with Argyll to Scotland, for he would not find such a disposition in the people of England at this time to give him that assistance which he might expect, and therefore they would by no means have him come for England, for here was nothing in readiness, nor no preparation made. People were cold, and he did find a great backwardness in the gentlemen he had discoursed with to any such thing and desired I would make the Duke as sensible as I could of it, and persuade him, if possible, to go for Scotland with Argyll which in all likelihood, would turn to the best account. I pressed him to let me know the names of some of these gentlemen that sent this message. *He told me it was no matter, for that I need not*

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*trouble myself, the Duke knew from whence and from whom the message was sent, and as for mo[ney] I was to tell the Duke there was no likelihood of raising any money here, especially in so short a time, for people were so cautious and fearful that they would not trust one another to discourse of any such matter. I told him, I did doubt that this would signify nothing towards satisfying the Duke, for that I was certainly told that the measures already taken would not be altered; but however he prest me to carry this message, for if the Duke were well, and thoroughly satisfied of the indisposition of the people as to their coldness and backwardness, it might put him upon other methods, and he was to be assured that no money could be raised here for him. I went with this message, and found the Duke in Amsterdam, to whom I delivered the message and told him how apprehensive his friends were of the danger which he would bring himself and friends if he should proceed in the way he seemed to take. The Duke seemed to be very angry and much troubled to meet with so much backwardness and coldness in his friends in so great an affair as this, and seemed to lay great fault upon *Major Wildman who would govern everybody, and did believe that was the cause of all backwardness of others, he was always the governor of Mr. Hampden and the rest*, but he should not govern him in this affair; and that *Wildman* liked nothing of anybody's doing, but his own, and with great passion said, "He thinks by keeping his own purse-strings fast and persuading others to do the same to hinder me in this thing, but he and they shall be mistaken." Some person or other that stood by made answer, "It may be he expects to be some chief minister of State, as Lord Chancellor to carry the Great Seal. I think it is best to send him over a Dutch butter-print for a Seal," with other reflections made upon him, which I do not well remember; and after I had been there two days the Duke sent for me, and told me I must go for England with all expedition, and to let them in England know, that he could not nor would alter his resolution, for he had promised the Scots to go for England, and all things were agreed between them and he would not deceive them, but would hazard his life and all rather than be found false to them; and if they would not supply him with money he would do what he could with what he had, and they were to expect no other resolutions than these from him, and did desire me to let them know that 5,000*l.* or 6,000*l.* was the least he should need or expect from them to be immediately remitted. I told him so much money to be raised and remitted so suddenly, for his supply, would be found hard to do. Either the Duke or Forgisson [Ferguson] made answer, if they were willing to supply the mo[ney] he could tell them how it might be done, and desired me to go to Mr. Hampden, and to tell him that the Duke did much depend upon him in this matter and prayed him to speak to Sir Samuel Barnadiston about it, for he was sure Sir Samuel could supply the mo[ney] if he pleased in time, and if he would not advance so much to get 3,000*l.* or 4,000*l.*, and to take *Mr. Hampden's and Major Wildman's word* to see him paid the whole again, and that the agreement he was at with the Scots was such that they could not find fault, but must not now trifle with time about any other resolutions to be taken, but desired they would not delay to give all assistance they could, for all was settled in such a posture and so agreed that it could not be altered, for the Earl of Argyll's provisions were shipped, and would be ready to sail in 10 days, and if he had a supply of mo[ney], he could in a week after be ready also; and with much earnestness greatly desire and press the thing, that they should be in earnest with him in this thing. I then prayed the Duke to send over some other person that was acquainted with his friends, and had some influence upon them,*

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for I had no interest, and as little acquaintance with any of them. I could only tell Mr. Disney what I had in command from him, but did doubt whether now, the time being short, anything could be done. He answered he had sent a person over, from whom he expected some good effect, which was Capt. Mathews, as he told me, who went for England 2 or 3 days before I came to Amsterdam the second time. What effect or answer Capt. Mathews sent, I know not. The Duke of Monmouth desired that *Major Wildman* and Col. Danvers and some others then named, who I have forgot, would meet together and consider what was to be done in reference to managing things in London, and, I think, one Mead was also mentioned to join with them, for, as I remember, Mr. Forgisson [Ferguson] named him, and said, he had a good interest with the people about London. There was one or two more named at that time which I have forgot, and that Major Bemmen should be sent to, to use his interest in the country to get people in a readiness, and the Duke desired that *Major Wildman would press my Lord Dellamer, and my Lord Maxfeild* [Macclesfield], and the rest of the Cheshire gentlemen to make all the provision they could, but the Duke said he feared the Lord Maxfeild [Macclesfield] would not be easily prevailed to immediate action, for he was old, and his blood was cool. But some person that stood by, said that his son, the Lord Gerrat [Gerard] must do the more, and that the Lord Stamford should be desired to join with them, and that Mr. Charlton should be spoken to, to try the Lord Devonshire, for it was said by some body, whether by the Duke I know not, that they believed he was the fittest person to deal with him in it. This was all, as I remember at that time, that I was to return as an answer, all which I told Mr. Disney at my return, as near as I could. One thing more I had from the Duke, to desire that *Major Wildman and the Lord Delamere* would send over some gentleman that they could trust to him, that they might be the better satisfied and have a fuller account of everything that they desired to know, and to send him word by him what dependence he might have at his coming into England. Mr. Disney, after I had delivered the message, ordered me to meet him the next evening at the Young Devil Tavern, by Temple Bar, where he told me *he had been with Major Wildman and given him account of what I had told him*, and Mr. Disney said that Major Wildman was very much disturbed that the Duke should continue so resolved, contrary to the opinion of all his friends on this side, that he and half a dozen of the fugitive English must conclude the scheme of the government of the nation, without the knowledge of any of the people in England, and that very thing was to disoblige the gentry, and that to this day they knew not what he intended to set up or declare, for it looked like a heedless thing and doubted it would prove so. That he could not tell what to say to anybody to encourage them, and much wondered that the Duke did not send over some person of his own, fully instructed to let them know at the first his intentions, but would now hurry them upon desperate attempts, and knew not for what. As for money, there was not 5*l.* to be had, for all people of interest were unwilling to part with a penny. I told him I had a message particular to Mr. Hampden, and desired I might deliver it myself. He told me he would see to-morrow, and let Mr. Hampden know it, and accordingly sent one Chadwick with me to Mr. Hampden, who was walking with a gentleman in the King's Bench garden. I waited on the other side of the garden till Chadwick returned, who told me that Mr. Hampden was busy, and besides I was a stranger to him, and did not care to speak with me; if I had any message to him, I must send it by some other hand. I told Mr. Disney

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what was said to me in that case, that I could not speak with Mr. Hampden, and then I told Disney the message, which was that the Duke desired him to prevail with Sir Samuel Barnadiston to advance 3000 or 4,000 pounds, and that he and Major Wildman would undertake for to see him paid. He told me he would endeavour to let Mr. Hampden know it, but whether he did or no I know not; but afterwards told me there was no likelihood of any money, and told me he had heard of Capt. Mathews, and said that he had had the same answer before, and that people were shy of him, and did not care to speak with him, and as for manage of things in London, he did believe there would be little done, for Major Wildman was unwilling to appoint any meeting, and besides his interest in London was not great; but Mr. Disney told me he would see and get Danvers to meet him and acquaint him with it and persuade him to it, and to get Mr. Mead to meet him; but he met me the next day and told me that Danvers did not heartily incline to it, for he knew not who would join with him for he could not meet with suitable persons to join with him; he could do little himself and desired to speak with me. And in the evening Mr. Disney sent a note to meet him at the Rhenish wine house in the Steel Yard, to meet Danvers there as he told me, but Danvers came not. I asked him then what account there was of *the Lord Dellameer and the Cheshire gentlemen*; he told me they were not come to town, but would be in town that day or the next. And as to the Lord Devonshire, he found no body inclinable to speak to him, for he was shy, and that they had no ground to persuade him, not knowing themselves what they were to do, and that the Lord Devonshire never had any kindness for the Duke of Monmouth, and that it would not be worth while to say anything, but said when the Cheshire men came to town he would see what would be done in it; and the next time I met him, which was the next morning, he told me the Cheshire people were come, but he discerned much flatness among them, and he could not find any inclination in them to discourse any of the nobility about it, for, said he, that sticks with them all, what model the Duke intends, or what it is they must declare for. And he believed they all took it ill that they were not consulted with and concerned in the modelling of the model intended. I told him it was too late to talk of that now, for it was to no purpose. He told me he would do what could be done to put life into as many as he could, but he told me he was of *Wildman's opinion*, it looked like madness to pull down an old house before they knew how to build a new one. We then parted, and met the same evening, and when it was dark he walked out with me to Lincoln's Inn back gate and bid me go into the Fields, and I should see a man stand there in a great long coat, and go up to him and say "Diss," and he will answer you, and then say what you please to him; which I accordingly did and talked near half an hour. The discourse was to know who were Monmouth's counsellors in this thing, and as he had heard the way they took was to ruin himself and the nation, and did believe he had better advice given him if he would have taken it; that was, to have joined with Argyll. I told him I knew none that could advise him there but such and such, as the Lord Grey, Fergisson [Ferguson], and others of the English that were there. It is well, he said, that they must be his conductors and none here acquainted with it who have ruined themselves, and will ruin us all, and we in England must be concluded by them there, and asked me if I were to go over. I told him I did not certainly know, yet he desired me if I did, to let the Duke know that a great many that he counted his friends would, he doubted, be very backward when he had most need of them, and that he would that the Duke had had early thoughts to have

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known his interest better in England, before he had undertook the design, and more to the same purpose, which was all I remember that past, and the next day Mr. Disney sent a note to me to meet him at the Devil Tavern at Temple Bar, and to carry this message to the Duke, which I told him was but a heavy one, and desired that the Duke would give some directions about his children, for there was care taken if they could be gotten away, for there had been some means used with the Duchess about it, but they had no success about it, and therefore prayed the Duke either to send some proper person about it of his own to the Duchess, or such a token as the Duchess would give credit to, for he thought it a great concern to secure the children. *I told the Duke of this*, as well what was said before, and [he] was much concerned to find there was no money to be had, and seemed to lay *all the blame upon Wild-man in all cases* who obstructed everything. And as to his children he said he had received a letter from some person or other from England, whose name I did not hear, that she had put away a servant that waited on the children, who had been tampering with her about it, and he knew not now what directions to give, for that servant was well-beloved of the children and would go with him anywhere, and he knew his wife would not part with them quietly, and was of the opinion that it could not be done, but would send some token over to her that she knew, with what he desired that the children might be secured in safety, but he believed it would signify nothing; and the next day came a letter from Disney to Forgisson [Ferguson] pressing the matter very earnestly to bring a token over to satisfy the Duchess, upon which the Duke would have given me a gold seal set with diamonds which she knew, but I refused to take it, for at this time when I came over, which was in or about the 20th of April, the Earl of Argyll was shipped with all his men and ammunition and was gone towards the Texel, waiting for a wind to carry him to sea, and I think lay a week or more and gave the whole country an alarm, and every body that was engaged in the design were in great pain until he was clear at sea, for fear he should be stopped and all endeavours used to let him know every day his danger, and how things moved at the Hague, and it would be quickly in England and therefore did conceive that all passengers to England would be stopped and examined, and I told the Duke that if I should be searched and such a seal found about me, it were sufficient reason I should be suspected either to have stole it, for such a seal as that did no way become one of my mean figure and quality, and it might give great jealousy to any magistrate to question me; for the Duke told me the seal was well known at the Court at Whitehall, for which reason I did not meddle with the seal, and for 2 or 3 days after till the Scotch ships were gone, there was little done that I knew of in any other matter, for the Duke intended to stay me there until they were ready to sail, and then I was to go over and give an account of it, but in this waiting Mr. Jones came over from England, I think it was of a Sunday, but I am sure it was upon Sunday that I first saw him, and he told me he came on a message to the Duke, but had not then seen the Duke, so I asked him no questions, for he was just going to the Duke and would not stay, but appointed me to meet him in the evening, and then I should talk with him; but when I came to his lodging, I found much company with him, and could say little to him, or he to me; but said the Duke had ordered him to be gone the next morning for England and promised me to come to my lodging the next morning, but his friends and the hurry of his business prevented him, that I had no time to discourse him, only gave him a guinea into his hand for a token to my wife as he was going to take his passage to Rotterdam, where he stayed 2 or 3

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days and returned to Amsterdam, for he durst not go over from thence for he apprehended he was discovered, upon which the Duke sent for me, and told me I must now go immediately for England, and Mr. Jones should stay with him, for he dare not venture over, and told me I must get ready to be gone in 2 hours time, and sent me to get ready and to be with him again at 11 of the clock, and then he should be ready to give me my directions. At 11 I came to him again, and then he told me I must go by Flanders and stay a day or 2 at Bridges [Bruges] and take over a gentleman with me and carry him to London, and care must be taken there to send him down into the country ready against he landed. There was a gentleman then with the Duke whom I knew not, but do believe by his tongue he was of the Scots' nation, that pulled a paper out of his pocket to give me instructions where to call on him at Bruges. I remember he told me his name was Monsieur Helburn, a gentleman [man] of Germany, and that he should be lodged at the Dutch Ordinary in Broad Street till he could be sent away for such port of the west. I told the Duke this would both hazard me and the gentleman in going over, for he could not believe but the noise was great in England, as well as elsewhere by this time, and we might well believe that the English coast would be narrowly watched for passengers and people coming over; that if I should take him with me, who could speak not one word of English, nor could have no pretence of going over, we should be stopped and so discovered, and I could not make any shift for myself if I were clogged with him, whatever the accident might be, and prayed I might not have that put upon me. Upon which the Duke took other resolution about it, which was that he should be sent as before to the Dutch House in Broad Street, or else he would send to Bridges [Bruges] for him and bring him with him, which last I suppose he did, for I never heard more of Monsieur Helburn; then desired me to make what haste I could over, and that he should be ready in a weeks time after, to sail himself for England, and desired that what horse might be spared in London, would come down to him into the West. He asked me what number of horse he might expect from London, whether 100 or more. I told him I could not tell. He said any that had a mind to come, must get out of London early, for as soon as the noise of his landing was known, the road would be all stopped, and desired me to speak to Alexander to do what he could in that part of the town where he lived, for he knew most people and had influence upon them; and if he could be spared from thence he would have him come down to him and bring half a dozen good horse or foot officers with him, for he knew most of the old officers about the town, and should bring down a suit of armour made of silk for the Duke. At my return, I told this to Disney, which was the beginning of May, and in a day or two Disney brought me to Alexander, I think it was at the White Lion in White-chapel, where I told Alexander what the Duke had said to me concerning him. All that he said was, he had not been idle in the business, neither would he be, and would endeavour too to get a suit of armour for the Duke, and said he knew several old officers that would be willing to go, but had not money to buy them horses and arms. I told him I could say nothing to that. The result of all, as I remember, was, he would do what he could here, and endeavour to go down to the Duke and carry him a suit of armour, but whether he did or not I know not. The Duke pressed hard that there might be a daily Consult held in London by some honest gentlemen to guide affairs there, and desire it might be recommended to *Wildman*, Danvers, [and] Mead. There was one or two more that then was named, either by the Duke or somebody else; I think one Johnson, but the rest I do not remember. And to en-

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courage them he had sent before into the west of England to prepare the people there against he came, and I understood that one Mr. Battiscom was gone for England on this errand about the middle of April. The Duke depended much upon Danvers and his party about London, and also Wildman was to be told that the Duke expected he should give what assistance he could about London, and *did expect Wildman should send down 5 or 6 good horses to the Duke into the West for his own use*. There was some other person named that the Duke expected horses from but do not remember. He told me if Sir R. Paton would meet him in the West, he should be glad of him, for he knew him to be an experienced officer of foot, and a great drill in that discipline; but some that stood by answered, he would be more serviceable in London, but he was desired to go to the Duke, or stay in London, as he pleased. The Duke desired as many officers as could be spared from London to come to him into the West, for he wanted them much. There was one Howard named that the Duke desired much, and several more names which I have forgot. The Duke asked me what I thought of the nobility, I told him I had no acquaintance with none of them, but by what I had heard they were not very forward; if a judgment might be made by the supplies they had made to him, there could be no great expectation from them nor the gentry. Then he said he hoped to do it without them, and that as soon as he landed he would send a messenger, post, with a consider[able] quantity of the Declarations to be dispersed; and said it were fit that a press should be ready in London to print daily such things as there might be occasion for. I told him I thought that would be done, for I heard Mr. Disney say he was preparing of it before I came away; and that also there should be a person appointed to lie continually ready at Mr. Lock's, and another at Mr. Black's in Covent Garden, to receive such messages as the Duke should send, that there may be despatch given to the messengers that were sent; and some person or other that stood by said that Mr. Brand would be a fit person for that purpose, but this was to [be] recommended to Major Disney, for so the Duke always called him, and desired *that the Cheshire Lords and gentlemen would be ready* and get what strength they could together there to divert the forces from coming all upon him at his first landing until he had formed his army, and did intend to fortify some place before he would fight the King's army, for he was resolved not to fight in 6 weeks or 2 months, if he could avoid it; and that *Wildman and Danvers* should be told that, as soon as the forces were drawn out from London, he expected they should stir there and secure the city, which I told the Duke I believed might be easily done. I do not remember much more that I was to say, but what was to the same purpose. Upon this I came to Rotterdam to get passage for England, but tarried there 3 or 4 days before I could get a passage; but I found a small vessel coming for London on whom I came over, and the next morning I sent to Disney to meet me, which he did, and delivered all to him that I had from the D[uke] of M[onmouth]. He told me he was much troubled to see the most considerable people so backward, for he could not get *Major Wildman to meet Danvers to consult what was to be done*, and that things, for ought he saw, were in no greater forwardness than they were a month ago. He told me that L[ord] Devonshire had not be[en] spoken to, nor believed nobody would do it now. As for the Cheshire people, as he called them, he did believe [they] would do nothing until they see the D[uke] landed; and the Parliament was now near to meet, and they that were to be in Parliament would not be absent for fear of giving suspicion; but he would acquaint some persons what the Duke did desire, but he feared that, if the Duke delayed coming, all

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would be spied, for the town was full of buzz and expecting him every day, and that he would endeavour to see his *Cuz. Wildman this day*, for so he called him, and tomorrow I should meet him at a little Coffee-house in a Court near Clement's Inn where Sergeant Fountayn formerly lived: the name of the Court I do not know. Accordingly, at 10 of the clock I met him there with Chadwick with him. He told me he had been discouraging some people upon the main point, but he believed the Devil was in them all, and in a sort of a passionate muse, he sat near a quarter of an hour without saying anything. *At last he said he found that Wildman nor the Cheshire men would come to no resolution until the Duke was landed*, for if they should, he could not see to what purpose, for if anything should be moved and take air they were all lost, or secured at least, upon the least noise in the world, and that would disenable them, and be a greater discouragement to the people than could be imagined, and he did believe there would be no more done in it by them till they saw the Duke have footing, neither could he prevail that Danvers should have a meeting with any of them, and if they would, he was not sure Danvers would. He said that he had spoken about the sending or getting of horses for the Duke against his landing, and did not know but some care would be taken about it. I asked him if there were any provision made for arms and ammunition. He said he did not know any provision was made, nor was there any money as he could find to buy them. Besides, he said, who a devil would venture now to buy any quantity of such tools, for he believed if any should at this time adventure to buy furniture for a troop of horse, he could not do it without being taken notice of, and be in danger of being clapt up, for he did believe there were eyes abroad looking into such thing[s]. I desired him to be plain and to let me know what their intentions were. He told me upon his faith he did not know, neither did he believe they knew themselves. I asked him if they had any money in readiness. Some of them, he said, had money enough, or knew how to have it, but he could never get enough to bear the plain soliciting charges that attended the business. I prayed him to let me speak with some of those gentlemen. He doubted that would hardly be, but he would try. And we went from thence to the corner of Lincoln's Inn Fields, and he bid me stay there at a door and he would come to me, which he did in less than a quarter of an hour, and told me there was no speaking with any body, and so we came back and walked in the Temple awhile and parted, and agreed to meet again in the evening and he would in the meantime endeavour to find out Danvers. We met in the evening and [he] told me Danvers was willing to meet any people that he knew were fit to be discoursed and able to give some assistance, but he found that he was for suitable people and who those suitable people were he did not know; and Danvers told him he had sent to Mr. Mead whom he expected in town in a day or two, and then they would see what could be done; but Danvers, as he told me, declined to discourse with Sir R. Paton, because he had at no time behaved himself well, and people were very jealous of him to trust him in anything. I desired I might speak with S^r R. Paton, and in 2 days time he sent me word I should meet him at the Bull Head tavern Without Bishopsgate, where I came and stayed 2 hours but met nobody there that day. In the evening I met Mr. Disney and [he] told me he was sorry he could not come, for he heard S^r R. Paton was out of town, but the next night I should find him at the Ross tavern in Leadenhall Street, where I went and found them. But when I had told him what message the Duke had sent, he said he could do him but little service, for the people were jealous of him

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in London, for he was told, if he should stir nobody would follow him, and he did not care to have his brains beat out alone, neither could he meet the Duke in the West, for he was expected every hour and he had neither horses nor arms, nor anything fixed for such an undertaking, neither could these be got ready in a little time as matters stood with him. This was all I remember that was said at that time, besides asking of questions: what number of people and arms, and what ships the Duke would bring with him, and such like. I went away and left them there; what passed afterwards I know not. As to the persons that were always to be ready to lie at Look's and Black's he gave me this answer—that it was not material, for that he ordered Tom Chadwick to call at Black's 2 or 3 times a day, which would do as well, and Jo. Locke would be always about home himself, so that there need no body wait there. I told him how earnestly the Duke pressed the having of some leading people meet daily if they could, or twice or thrice a week at least, to guide affairs in London. He told me he should in a day or two hear from Danvers again, and it may be Mr. Mead may be come to town, and he then would see what could be done in it; but I saw him no more in 4 or 5 days, and asking him why he did delay, he told me he had more businesses than one to attend upon, and was seemingly very angry. I understood by him it was some disappointment about his printing which had disturbed him, but he told me that Mr. Mead was not yet come to town nor knew not when he would, but there was a messenger sent to him on purpose to know when he would be in town, which he expected the next morning to bring him an answer. He said the people were very impatient in waiting for the Duke's coming and thought him long, and there were some people going out of town westward to wait for him, and if he did not come in a very short time, the people would think it a cheat only, and some had as good as told him so already. I do not remember we had much more discourse at that time, but [he] told me I should hear from him in 2 or 3 days' time. About 2 or 3 days after, he sent a note to me to meet him at an ale-house in Sheare Lane, I think it was the sign of the Trumpet. When I came, he was sealing of deeds and paying of money with two or three more whom I knew not, but he told me Mr. Mead had promised to be in town the next week, and as I remember, this was upon a Saturday, but [he] told me the people were very impatient and he could not go about streets, people did so tease him about the Duke's long stay. I told him there was no help but patience, and we could have no certainty until Mr. Jones came, who was expected every day. He asked me if I had no letter from thence; for now I had been come over 3 weeks, or very near, and not one word was sent over of the reason of their stay, and I was told by the Duke that he would sail the week after I left him, which put people upon mistrusting it was all false. I do not remember we had any more discourse besides that which concerned eating and drinking, only he told me several people were gone down into the West. I think particularly he named Huling with some others. This was near the sitting of the Parliament. We parted then, and I saw him the Monday following, and he told me that the Cheshire people were all in town, and that the Lords did attend the House of Parliament, but what they intended he knew not, and all people were dissatisfied about the Duke's making such a long stay, and now began to think he would not come and had made he believed many people lay aside their intentions; for the news that came that day from Scotland gave no good account of Argyll's condition, and he discerned a strong alteration in the minds of people. At this time Jones was expected also but not yet heard of, and he said further he had

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received a note from Danvers wherein he wrote him that Mr. Mead was not yet come to town, and desired to speak with me, or himself, or both, and to know what measures were taken *by the Lord Delamere and the Cheshire men and what they were about*, and desired to speak with some of them if he pleased. He desired me to go to Danvers and tell him that he could give him no further account than what he already knew. I told him I knew not where Danvers lodged, but if he could not go himself he best write, for it would be more satisfaction to him to let him know how he understood things, and I would give the note to young Lock, who knew how to convey it to Danvers, and he did so, and told me he pressed Danvers to get Mr. Mead to town, who was not yet come, and that there might be a meeting had by him and Danvers, and he would endeavour to get *Wildman to meet him*, but he said he could give him no account of the Cheshire business, for everybody was discouraged by the D[uke] delaying, and these great people were good for nothing. This note was sent, as I remember, by Lock, but in this very time, before I suppose that he and Danvers met, there was news of Jones's arrival who brought this news; that when he came through the Texel he saw the D[uke] with all his ships under sail for England, and was so near one or two of them that he waved his hat to some he knew standing upon the deck; and this put all into some kind of motion again. For a week or 10 days past little was done or said, for ought I heard, by any body, but waited to hear out of Holland. I did not see Jones the day he came to town, but news was brought me by young Lock that Jones was come. That which Jones said the Duke desired [was] that a messenger or two might be sent into the West, and as I remember, they were to go to the Red Lion in Taunton, and thither the Duke did intend immediately upon landing to send a messenger, to signify what he would have done and how things were with him, and those messengers were, one or both to come back on the Duke's errand, if there were occasion of sending. And now that people which were ready to meet the D[uke] should be getting out of town as fast as they could. He had a message to Alexander, as he told me, but I think Alexander was gone before he came, but that night I had a note or a message to meet Mr. Disney at an ale-house, or a cook's shop in Smithfield by the sheep-pens at 10 of the clock, which when I came [to], *there was Brand, Disney, Chadwick, Jones. I think there was somebody else*, but I have forgot; but I remember they were faces I did not know. All that was said or done there, was to order Brand and Chadwick's going down to Taunton to wait the Duke's coming, for he altered his resolutions after I came from Holland. Instead of messengers to wait at Lock's and Black's to whom he would send, he ordered the messengers to wait for him at Taunton. I do not remember any particular was given them in charge, only to hasten away to the place, and I think they went the next day; they were desired, and promised, so to do, but I saw neither Brand nor Chadwick after that. I do not remember any material discourse of anything that Jones said more, but hastened people away, and I think he himself stayed not long in town, but with all haste went to the Duke. What other messages he had I do not remember. He told me, I think, Mr. Jones came to town about a week after the Parliament sat down, I am not very certain of the time, but about the 25 or 26 of May, if I do not mistake, and as I remember, he stayed not above 4 or 5 days in London before he went down. This put life into the people a little, and Disney was labouring to get a meeting of Wildman and others, which yet he could not obtain, but he was as successful as before, for in a day or two after this, which as I remember was the beginning of June, he came to me, and told me *Wildman* was out of town, and did believe was gone to visit Mr.

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Charlton, but was told he would be in town in 3 or 4 days, and it should go hard, but he would bring some of them together, and see what would be done, that people might understand whether there were any conduct or no to be expected from them, and wrote a note, as he told me, to Danvers to meet him the next day, and he would bring Wildman and Danvers together. I saw not Mr. Disney in 3 or 4 days after, and then he told me he had sent as many people out of town as he could, but as yet he had not seen Wildman, but was told he would be in town that night, and did intend to wait upon him the next morning at 5, for he was an early man and prayed me to meet him at the Coffee house in the Court by Clements Inn, which I did, and there [he] told me he had met with *Wildman* and Mr. Charlton both. I think he named Charlton, and told him that Jones was come, and what message he brought and he promised him to speak with the *Lord Delamere that day*, and would do what he could, but found Wildman but in a cold temper; and I remember he told me that there would be some care taken that *the Duke should have 3 or 4 led horses meet him in the West*. The next day, I met him at a Coffee house over against King's Gate in Holborn, or near it, and [he] told me his *Cuz. Wildman had seen Lord Delamere, and all that he did understand by him that the Lord Delamere* could do nothing till the Parliament was up, for he believed they should not sit above a fortnight, but till they had broke up, he could not leave the house; but he should be missed in such a juncture as this, for he had no pretence to go into the country, for if he had, it would give great jealousy, and as for meeting of Danvers or any of that sort, as he termed it, he found no disposition in *Wildman so to do*, and would not press him any further in it, for if he did act, it would be with *Delamere* and the rest of that gang, for he found they were all of a piece, and now he could not run up and down after them as he had done, and let them do what they please, for they know now how all matters stand, and for his part he had other things to mind, but [he] said he would try Colonel Danvers once more, to see if he and Sir R. Paton and Mead would meet and have a right understanding, but he did believe that Sir R. Paton was so disgusted by that party that he was not to be reconciled, for he must confess it is a slight put upon him, which nobody can bear. He told me he would see young Lock, and put him upon getting Danvers and Mead to meet, but I understood the next day by Lock, that Mead was not in town and had been sent to often to come, but did believe he stayed away on purpose, but there should a messenger be sent to him once more and he would get Colonel Danvers to write to press him to come; but a day or two after, Lock told me that Mead was in Essex with his friends, and they would not let him come to town. I did never hear that ever there was a meeting of Mead and Danvers or any other of that party to consult of what was to be done, and now I think at or about this time there was news come that the Duke was landed, and Lock went or sent to Danvers to come to his house; but he sent him word, as Lock told me, that he thought it dangerous, but desired him to get Disney to meet him the next day at the Still [Steel] Yard, and to bring me with him, which accordingly was done; and Disney came there and brought a person with him, who I knew not, but he was known to Danvers as I perceived by their behaviour. That which was discoursed there, was to see what might be done in the City, for now the Guards were all drawing away and the City might easily be taken, for Disney said the people are willing everywhere, but there wanted money and ammunition, which now was hard to be procured; and then they fell to debate what they should do for officers, and who

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should head the people, which took up much of the time but came to no result, for they were at a loss for officers and arms and a person that came with Danvers, who I knew not, but [he] seemed to be a countryman, made answer, indifferent soldiers would make officers in the City where was little skill to be used but club law. But, it was answered, that was a mistake, for there must be some proper leading man of note to head them that had good conduct with him, and then Paton was mentioned, and all agreed him to be the fittest man they could find, but were afraid people would be jealous of him and would not submit to his conduct, so that was laid aside. But Disney replied that Danvers should then undertake it, but he seemed to be very angry at that, for he said he could not nor would meddle with nothing that was thus confused: he was not for disorderly actions in no case, neither would he meddle with any such thing, unless there could be a meeting had of some principal men to agree of a method to go on, and to appear with the people to encourage them; he was doing for nothing, for you see that neither Wildman nor Mead nor any body else will appear, either in person or purse, and what can raw men do unskilled, and no arms nor ammunition thought on [of]? For his part he saw an impossibility from one end to the other. He was for a regular proceeding and for order, and not for confusion and a rout, and much of this discourse but to the same purpose, but it was desired that Mr. Mead might be spoken with that his mind might be known however, which Danvers undertook, and to meet at the same place the Tuesday following- and this was, I am, I think, very sure, upon a Saturday, for before they met again Disney was taken, and I believe it was near the time [of] the D[uke's] landing, so I heard no more at that time about meeting afterwards, or whether Danvers and Mead met I do not know; but about a week after, Lock told me Mead was in town and had been at his house and stayed half an hour, and he not being within went away; but he was going to seek after him and would endeavour to get Danvers and him together; but the next time I saw Lock he told me Mead would not be found or spoken with, for he had understood there was an order to take him up, and did believe he was gone out of town again. Lock would have had me met Danvers, which I promised to do, but, said I, what can be done now Disney is in prison? we cannot come at Wildman, nor Delamere, nor any of those people to know what they intend; [as] for Danvers I thought him to be a coward. I knew not how to handle a musket or scarce to shoot it off; besides there was no money and now all hope was lost of having any communication with Wildman and the Cheshire people, for Lock told me that he believed Disney would not get off: he said he heard the Parliament was to break up, and then he doubted not but there would be a way found to speak with some of the Cheshire gentlemen, for he was assured that the L[ord] Delamere would not stay above a day or two in town after, but would go into Cheshire. I did believe I told him, that was but notion, for what could he do there when all the militia was up in all the counties in England? but if he could be stayed here to countenance the people it looked like something, for all people seemed to have a good opinion of him, and he had, for ought I know, as good an interest in London as in Cheshire, and much more to the same purpose, but [I] told him he was to remember here was neither arms nor mo[n]ey, not so much to pay a tavern reckoning now Disney was gone. After 2 or 3 days, Lock came and told me that the Parliament would go home in a day or two, and hoped that then something would be done. I answered him he might believe what he pleased, for I had no hopes at all, for all that I saw was that people were taken

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up and kept in custody, and those that were not, were hiding themselves, as Mead and Danvers did, and where would he have anybody to meet unless it were Billingsgate porters? and if 1,000*l.* would save the Nation I could not see what way it could be had; and [there were] neither officers nor arms for the people, and none but mad men could believe anything could be done. He told me if Danvers and Paton would appear, there were officers enough about the town would fall in with them, and if they got but a little strength or 300 or 400 men in a body, they might fall upon the City guards and release the people that were in the "haws": and disarm the soldiers that guarded them, and there would be men and arms both. I bid him try Danvers with this project, and if he and Paton would meet, I would meet them; but I found he could do no good with Danvers, but told me Danvers did believe the Duke prospered in the West, and there would be no need of anything here, and for his part he did not think to stir any more, but would meet St R: Paton anywhere, and the place was appointed at the Py [Pie] tavern without Bishopsgate, where I met Paton and Lock, for Danvers was not come, and began to talk of it, but as soon as Paton understood it he made slight of it, and said he would neither meddle nor make, and told Lock he had heard that he should say if he appeared no body would follow him, and he saw everybody was more ready to hide than fight, and after some little stay, [he] went away, and I think we all went, for Danvers came not while we stayed, and this was, as near as I can guess, about a week or 10 days at furthest before the news came of the Duke being routed in the West; but the next day Lock came to me, and told me *the L[ord] Delamere was to go that evening for Chester*, and hoped he would do something there. I told him I saw it impossible for him or anybody else to do anything but run away, for all the leading people and gentry of England were either in custody already, or getting out of the way, and what could be expected? and I remember he told me he had heard there was a warrant out to take him up, and therefore he intended to go out of town that night into Hertfordshire, but [I] do not remember the place was named where he went and saw him no more in [for] a week after, for my wife lay sick and my children also, and she and one of my children dying. I never saw Danvers nor had any meeting with him nor anybody till he came to town to me, which was the day my wife died, and I was full of trouble and prayed him to forbear for I could think of nothing. I remember he told me that there was one come from the army for the D[uke] and there was to be a meeting, he thought, of Paton and Danvers and others that afternoon at the Bull Head Tavern in Bishopsgate Street, and it was I remember of a Sunday, and it happened to be the day that Monmouth was routed, but I went not to them nor know what was done at the meeting. I saw him 3 or 4 days after, and he told me Monmouth was routed and Manley was the messenger that came, but he and many others were getting away, and more occurs not to my memory at present.

Signed ROBERT CRAGG.

[On Dec. 4 Cragg was ordered to attend the Committee for Inspections concerning the Rye House Plot, and being asked on 6 Dec. what he knew of that Plot, deposed that he was examined before the King at Whitehall, three or four lords being present—L. Chancellor Jeffreys, E. Sunderland, E. Rochester, L. Godolphin—to what he knew concerning the knowledge of the L. Steward, L. Delamer and E. Macclesfield of D. Monmouth's Rebellion (Com. Book). Thereupon the House, on

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motion that "a person" may be examined to prove the endeavouring to suborn witnesses against the Lord Steward, E. Stamford, Macclesfield and L. Delamer (MS. Min., 7 Dec.), appointed the Committee on the Subornation of Witnesses (L. J., XIV., 364), the proceedings of which are thus given in Com. Book. On 9 Dec. *Robert Cragg* deposed, in addition to what is reported in L. J., XIV., 367-8, that he was taken into custody by Atterbury, the Messenger, by the inducement of Mr. Bridgeman. This was after D. Monmouth's Rebellion. He was not examined before he came to Whitehall. Mr. Bridgeman had promised Stokes, that if he would come over and discover what he knew he should have his liberty and a good reward. He knew not how the King was informed that he knew anything. The L. Chancellor, Mr. Bridgeman and Mr. Graham severally promised him a reward, besides his pardon, if he would swear against those lords, L. Paget, Mr. Charlton, or Major Wildman and others. They were satisfied that he did know something. He told them he could not swear against any of them. After this Graham pressed him again to swear. Burton was present, but he could not say Burton promised him a reward. Bridgeman, Burton and Graham came to him to Newgate, after he had before told them that he could say nothing, and Bridgeman and Graham and Richardson, the Keeper, pressed him to swear, and promised him a reward. He was tempted three or four days before L. Delamer's trial, to swear against him by Bridgeman and Graham. Bridgeman and Graham were with him thrice in Newgate in ten days. He knew not that he had said anything of this matter to any person since he was summoned to this Committee; but he had talked often of it since he came out of prison, and he had been examined before a Committee of the House of Commons, where he had spoken most of this matter. Being asked how he had put his life into the King's hand, what he needed a pardon for, he demanded the opinion of the Committee whether that question was within the Order by which he was summoned. He withdrew. On being called in again, he was asked how he came to be in danger of his life, what he had done that made him so. He begged pardon for not answering, and said, if he was ever culpable, he looked on himself as not pardoned, but excepted in the General Act, though not by name. The Committee then resolved that the House should be consulted as to whether Cragg should answer that question. *Cragg* then went on to say that he thought he was committed by L. Sunderland's warrant for conspiring the death of the King. He was taken up in Paul's Churchyard. He met Mr. Bridgeman there upon promise that he should not be restrained, but when he came there, Bridgeman took him with him, saying he must go with him to Whitehall, and he put him in Atterbury's hands, who carried him to Newgate. He never saw Bridgeman before. It was agitated between his brother Stokes and Bridgeman, who promised Stokes that Cragg should not be confined if he would confess all he knew against those lords. Stokes wrote to him abroad that, if he would confess what he knew, he should not be restrained. He came over upon that invitation, but he could not accuse any one. He was kept close 36 weeks, a great part of the winter without fire or candle, and was denied pen, ink and paper. They did not promise him a reward to swear what he did not know. The Question was put whether Cragg should be asked whether anyone pressed him, swear what he did not know against these lords, and was carried in the affirmative by 13 votes to 10. He saw nobody but the Keeper in thirty-six weeks in Newgate. He was not in irons, but he lay in his clothes six weeks. None of his friends were suffered to come

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to him, though he was seven weeks sick. He never had money nor kindness from Richardson,* who said he had kept him close that month for his own pleasure. Mr. Serjeant got him bailed out, for which Mr. Stapilton, a Popish prisoner, had 50*l.* of Cragg, and he was fain to give Richardson four guineas to have his Habeas Corpus allowed. The Committee then reported on 11 Dec. (L. J., XIV., 367-8) and was revived (MS. Min.).—On 20 Dec. *Mr. William Bridgeman* delivered in some Papers which he said were all he had concerning Cragg, and they were read in his presence. He said Stokes, Cragg's brother, informed him that his brother Cragg was in Holland. He told him that if he would come over and tell what he knew he should have his pardon, whereupon he came over and sent for witness to meet him at a Tavern in Paul's Churchyard, where they met, and Cragg came to Whitehall and wrote the Paper now given in. Witness remembered not the time, but said it was in summer. Had had the papers, this last time, about 10 or 12 days. Upon inquiry about six or seven months since, had heard they were in Graham's or Burton's hands, and had sent to them then for them, and read them and returned them. Mr. Shaw brought him these papers the last time he had them, but he knew not whether Shaw had gone to Graham or Burton for them. Knew not whether Cragg gave him or the Lords of the Council the Papers now delivered in. The Papers were then ordered to be sealed up by the Chairman and kept by the Clerk. On 21 Dec. they were opened again and *Bridgeman* declared they were the very Papers that Cragg delivered to him or the Council, and that he verily believed this was the Paper which was given or sent in a cover to L. Sunderland or to himself, and was read by him before the King and the Lords that attended them. Cragg was called in on that occasion and had some part of the Paper read to him, if not the whole. Then *Bridgeman* was directed to write down what he could say about the papers, and what he wrote down was delivered in and read. *Bridgeman* then stated he did not certainly remember who were the two persons mentioned in his paper as having confronted Cragg at the Council, but he thought, and was very confident, Jones was one, and it was possible L. Grey was the other. Cragg had been asked, at the reading of these papers, whether he had not been in such and such places, or with such and such persons, and he answering negatively, those two persons were confronted with him and deposed affirmatively. Witness had not been oftener than once in Newgate with Cragg. *Robert Cragg* stated *Bridgeman* had been with him in Newgate but once or twice at most, and neither he nor Burton were with Graham the third time, but a person whom he knew not. The persons confronted with him at the Council were L. Grey, Wade, and he thought Goodenough was there. The paper delivered in by *Bridgeman* was in his own hand, and he owned it. They testified several things against him that he denied. The L. Grey seemed to have some consternation on him, and disturbedness in mind. Witness had not then seen L. Delamer's face. Then the Committee ordered this to be reported to the House. (Com. Book of dates.) The motion in the House on 21 Dec. for this Report to be now made was negatived by 29 (including 4 proxies) to 28 (including 6 proxies), E. Thanet and E. Manchester being the respective Tellers (M.S. Min.). On Report on 2 Jan., Cragg's paper was ordered to be read on Monday the 6th, but the House did not sit on that day. L. J., XIV., 367-8, 401.]

* Richardson stated to the Committee for Inspections that he had been very kind to Cragg and had endeavoured to get him out. Com. Book, 6 Dec.

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Annexed:—

(a.) Cover in which the preceding was sealed up by the Chairman on 20 Dec. *Endorsed* Mr. Crag's papers brought to the Committee for Examinations touching the subornation of Witnesses against the L. Steward, the L. Delamer, E. Macclesfield and E. Stamford, 1689.

197. Dec. 21. Arms, etc., Exportation Bill.—Draft of an Act for the more effectual restraining the exportation of arms and ammunition. Whereas by the law of this realm their Majesties may for any time (as they shall see cause) by proclamation prohibit the transporting of any arms or ammunition into any parts out of this kingdom, but doubt hath arisen whether lead and brimstone shall be esteemed to be ammunition liable to be prohibited as aforesaid; and it being necessary at this time to restrain the exportation of the said commodities, they being principal materials of which bullets and gunpowder are made; and if they should be transported to any foreign parts their Majesties' enemies might by means thereof be furnished with the same; Therefore, for more plain declaration and for the strengthening and better execution of the law in all and singular the premises, Be it enacted by the King and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, that during [blank] no gunpowder, saltpetre, lead, brimstone, arms, nor any ammunition whatsoever shall without their Majesties licence in that behalf obtained be transported or carried out of this kingdom; and if the same shall be laden on board any ship or vessel [or be brought or carried towards the sea coast or to any place with intent to be transported as aforesaid],* the same shall be stopped and seized and shall be forfeited to their Majesties; and the person or persons offending therein shall also lose and forfeit [blank] and shall forfeit and pay [blank]. L. J., XIV., 396. [Read 1^a and 2^a and committed to a Select Committee this day. On 23 Dec. it was considered by a Committee of the whole House, D. Bolton in the Chair, when the title was agreed to, and the Judge's opinion asked whether the King by his proclamation can prohibit exportation of saltpetre and lead. A clause in the Act of Tonnage and Poundage was read. Then the preamble was read, and the House resumed. MS. Min. No further proceedings.]

198. Dec. 21. Greenwich, &c. Court of Conscience Bill—Commons' Engrossment of a Bill for erecting a Court of Conscience for Greenwich and other places in the Hundred of Blackheath in Kent.

§ I. Whereas it hath been found by long experience that the erecting of a Court of Conscience in the City of London for determining of all matters of debt and actions upon the case under the value of 40s. hath been of great benefit and advantage to the poorer sort of freemen and inhabitants of the said City, and hath prevented many great mischiefs and inconveniences that would otherwise have fallen upon them by the charges of arrests and other process and proceedings in law, in case the same should have been prosecuted against them in any of their Majesties' Courts at Westminster or other inferior Courts; But forasmuch as the jurisdiction of the said Court does not extend further than the said City of London and the liberties thereof; And whereas, since the establishment of the said Court within the said City and the liberties

* The words within brackets are scored through on the Draft.

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thereof, the parishes of East Greenwich, Deptford, and Woolwich and other places within the Hundred of Blackheath in the County of Kent are become very populous, and many poor artificers, labourers, mariners, and others inhabiting therein, amongst whom, for want of the like good order and establishment, divers vexatious suits for several debts are daily commenced and prosecuted in the Courts at Westminster and other Courts, which are much more expensive to the parties than the respective debts and causes of action for which they sue, to the ruin of them, their wives and children, and filling the prisons with miserable debtors, and creating great charge to the several parishes wherein they were inhabitants for their support and maintenance; For remedy whereof, Be it enacted, etc., That there be a Court of Request or Conscience for the relief of the poorer sort of people in small debts erected and established in the said Hundred of Blackheath for the several parishes and places hereafter mentioned (that is to say) East Greenwich, Deptford, Woolwich, Eltham, Lee, Lewisham, and Charleton parishes and the liberty of Kidbrooke and hamlet of Mottingham in the said County of Kent.

§ II. And be it further enacted by the authority aforesaid, that Sir John Shaw, Sir William Langborne, Sir John Morden, Baronets, Sir William Hooker, Sir John Lethieulier, Sir Richard Reynes, Knights, John Evelyn, Christopher Mason, Nathaniel Hornby, Nicholas Cook, William Stevens, Christopher May, John Perry, John Knight, Samuel Lewin, Edmund Harrison, Esquires, Christopher Sherman, Salusbury Cade, Richard Philipps, Gentlemen, Richard Thomas, Brewer, Robert Watson, Gentleman, Anthony Shercliffe, Gentleman, Thomas Pitcher, Gentleman, John Shalerosse, Mealman, Thomas Robinson, Apothecary, Richard Mansfield, Mealman, Thomas Sewers, Gentleman, Samuel Ladbroke, Mealman, Thomas Markham, Gentleman, Nathaniel Ryley, Baker, shall be and are hereby constituted and appointed the present Commissioners for the purposes in this Act, and they and such other Commissioners as by virtue of this Act shall be hereafter nominated and appointed, or any three or more of them, are hereby empowered and authorized to execute the powers and authorities of this present Act in such manner hereafter expressed, which said Commissioners herein-before named shall continue for twelve months from the first day of January 1689, whereof the first fifteen named for the said several parishes, liberty and hamlet, at the expiration of the said twelve months shall be discharged and the remaining fifteen, or so many as shall appear at the time of electing others in the places of those that are so discharged, shall choose fifteen more of the ablest and best of the inhabitants of the parishes and places aforesaid to serve for twelve months after, and then the other fifteen, the remainder of the first thirty, shall be discharged, and the last chosen fifteen shall elect more in their room in the manner before-mentioned, and so successively every twelve months after.

§ III. And be it further enacted by the authority aforesaid, That before any of the said Commissioners shall execute the authorities of this Act, they shall take the Oath following before one of their Majesties' Justices of the Peace residing within the division where he is named to serve, vizt. :—

I, A.B., do promise and swear that all such matters and causes as I shall order or determine by virtue of this Act, I will order and determine with justice and equity, according to the best of my knowledge and understanding. So help me God.

§ IV. And be it further enacted by the authority aforesaid, That, for the prevention of defrauding or oppressing of the said poor, either Plain-

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tiff or Defendant, that the costs of suit or number of the officers of the said Court, and the fees of the officers for despatching the business of the said Courts (*sic*) be such and no other than what are hereafter named (that is to say) for every *Plaint 2d.*, for every *Appearance 2d.*, for every *Order 4d.*, for every *Precept or Warrant to commit to prison 6d.*, for every *Search 2d.*, for every *Satisfaction acknowledged on the Order 4d.*, for every *Warrant for levying the debt by sale of the goods 6d.*; To the *Beadle or Beadles attending the said Court*, for warning every person *4d.*, for serving every precept or warrant *4d.*; And that Robert Salusbury of East Greenwich aforesaid, Gentleman, is (*sic*) and is hereby nominated and appointed Register and Clerk of the Court of Conscience aforesaid, so long as he shall well and truly demean himself in the execution of his said office; And the said Robert Salusbury is to nominate and appoint his Deputy or Beadle under him, to be approved of by the said Commissioners or the major part of them, and in case of removal upon lawful conviction of any misdemeanour, or decease of the said Register, or Clerk or Beadle, the said respective Commissioners or the major part of them upon any such removal or death, are to nominate and appoint some other person as they shall think fit, for the supply of such vacancy as shall happen as aforesaid.

§ V. And be it further enacted, by the authority aforesaid, That the said Commissioners, or any three or more of them so appointed as aforesaid, are hereby authorized and required to meet and assemble themselves together on the first Wednesday in every month and oftener, if the Commissioners shall think fit, and in such place as shall be appointed and ascertained by the said Commissioners for the time being, to hear and determine all such matters of debt or actions of the case upon any *Assumpsit*, for the recovery of any debt not amounting to forty shillings, brought before them, according to the true intent and meaning of this present Act.

§ VI. And be it further enacted that every person or persons inhabiting or that shall inhabit within any of the parishes, places and liberties aforesaid, being a tradesman, victualler, labouring man or other persons inhabiting or that shall inhabit within any of the parishes, places and liberties aforementioned, shall or may cause each debtor or debtors, being under the value of forty shillings, or by other reasonable warning or notice, to be given or left to the said debtor or debtors at their dwelling-houses or place of abode of the Beadle or Beadles of the said Court, to appear before the Commissioners of the said Court of Conscience; And that the aforesaid Commissioners, or any three or more of them, shall have power and authority by virtue of this Act from time to time to set down such Order and Orders, to be made known between such party and parties, Complainants, and his, her or their debtor or debtors, Defendants, touching such debts not amounting to the value of forty shillings, before the said Commissioners as they shall find to stand with equity and good conscience in a summary way or without adjournment, not tying themselves to the exact forms and methods of the Common Law or other Courts of Justice, which said Order or Orders shall be final and conclusive to all persons therein concerned, their executors and administrators, nor shall any Writ of Error, Certiorari, or process of Law or Equity lie for the removal, stay or reversal of the same; all such their Orders to be registered in a Book or books fairly written, to be kept in the said Court, and as well the Plaintiff as Defendant shall observe and keep the same in all points. And for the due proceedings therein, it shall and may be lawful for the said Commissioners, or any three or more of them, to administer an oath to the Plaintiff or Defendant,

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and also to such witnesses as shall be produced on each party, if the said Commissioners, or any three or more of them, shall so think it meet.

§ VII. And be it further enacted, that if any such creditor or debtor, after warning given to him, her or them in manner and form before in this Act mentioned by any Officer of the said Court, shall, without some just and reasonable cause or excuse, to be allowed by the said Court, refuse to appear in the said Court, That then it shall be lawful for the Officer or the Officers of the said Court, by order of the said Commissioners, or any three or more of them as aforesaid, to carry and convey such party or parties to some prison or prisons within the jurisdiction of the said Court, there to remain without bail or mainprize until he or they perform or fulfil the Order of the said Court respectively; And in case any creditor or creditors, Plaintiff or Defendant, do not or shall not obey or perform such Order and Orders or Decree as the said Court shall make, set down or direct in, for or concerning such debt or debts, or the payment or allowance of any costs or damages for or in respect of the same, that then it may and shall be lawful to and for the said Officer and Officers of the said Court, by the Order or Orders, Warrant or Warrants of the said Commissioners, or any three or more of them, to levy such debt or debts, damages or money, by the said Commissioners awarded or ordered to be paid by and out of the goods and chattels of such creditor or debtor, Plaintiff or Defendant, and by sale of the same, returning the overplus (if any be) to the party or parties upon whom they levied it; But if sufficient of the goods and chattels of such party or parties cannot be found within the jurisdiction of the said Court, whereby and whereout such debt or debts, costs or damages so awarded, shall or may be levied, raised or satisfied, That then it shall and may be lawful for such Officer or Officers of the said Court, by the Order or Orders of the said Commissioners, or any three or more of them as aforesaid, to carry and convey such party or parties to some prison or prisons within the jurisdiction of the said Court, there to remain, without bail or mainprize, until he, she or they do and shall perform or obey such Order or Orders or Decree of the said Court respectively. And if any person or persons shall at any time next after the first day of March, which shall be in the year of Our Lord 1689, commence and prosecute any action in any of their Majesties' Courts at Westminster or in any other Court against any person or persons inhabiting or residing within the jurisdiction of the said Court for any debt or sum of money due upon contract, promise, specialty or otherwise, which upon the trial shall be found not to amount to the full sum or value of forty shillings over and above costs, no judgment shall be entered on record upon any such verdict; and if any judgment shall be entered thereon, then such judgment shall be and is hereby declared null and void, and also the Defendant in every such action shall have his costs in the said suit, to be taxed by the said Court or their proper officer where such action shall be tried, and paid him by such Plaintiff in the said Cause, any law or custom to the contrary in any wise notwithstanding.

§ VIII. Provided always that this Act or anything herein contained shall not extend to any debt for rent upon any lease for houses or tenements or any other real contracts, nor to any other debt that shall arise by reason of any cause concerning a testament or matrimony or any other thing concerning or properly belonging to the Ecclesiastical Courts, albeit the same be under forty shillings, anything before contained to the contrary in any wise notwithstanding.

§ IX. And be it further enacted by the authority aforesaid, That no Commissioner or Commissioners who shall execute the powers and

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authorities by this Act given, shall be liable for or by reason of such execution, to any of the penalties mentioned in an Act made in the 25th year of the late King Charles II., For preventing of dangers which may happen from Popish Recusants, in respect of the execution thereof.

§ X. Provided also that this Act or anything herein contained shall not extend to restrain or limit the lawful jurisdictions and authorities of the Manor Courts belonging to the Right Honourable George, Lord Dartmouth, or to any other Lords of Manors within the jurisdiction of the said Court of Conscience, in any matters or causes whatsoever; but that they shall be and remain in the same condition as if this Act had never been made. *Parchment Collection*. [Brought from the Commons this day and rejected on first reading on the 23rd. L. J., XIV., 395, 397. The Bill is similar to, and partly identical with, the Norwich Court of Conscience Bill, No. 195.]

199. Dec. 23. D. Norfolk's Act—Amended Draft* of an Act to discharge the Duke of Norfolk and [other] *the Trustees of Henry late Duke of Norfolk* upon payment of certain sums of money to [Dame] *the Lady Eliz. Teresa Russell*, wife of Bartholomew Russell, Esq. [Read 1^a this day. Royal Assent 27 Jan., L. J., XIV., 397, 427. I W. & M. c. 14, in Long Calendar. See also Com. Book, Jan. 3, 8, 1689–90. The amendments are those in the title and some consequential thereto.]

200. Jan. 2. Vincent v. Parker.—Petition and Appeal of Dame Mary Vincent, Widow, and Vincent Vincent, Esq., an infant, Executor of Sir Mathias Vincent, Knt., by the said Dame Mary his mother and guardian. The late Sir Mathias being sued in Chancery by Martha, executrix of Robert Parker, deceased, for an account of certain goods consigned to him at Hugelcy, [Hoogly] in the East Indies by the said Robert, then living at Bantham [Bantam], admitted having received part, to the value of 182*l.* from a fellow-consignee, one Bugden, but claimed a set off of 400*l.*, due to him from Parker on account of opium. The Court allowed Parker's claim on 26 April 1688, but subsequently dismissed with costs Petitioner's counter-claim, which formed the subject of a separate suit. There was no proof of the debt of 182*l.* but by Sir Mathias' answer, and that being so, the whole answer, including the counter-claim, ought in equity to have been taken together. Had the Court granted time to have evidence taken abroad by a Commission, full proof of the 400*l.* due would have been forthcoming. The Court, in allowing 182*l.* with interest from the time of the receipt, gave more than was asked for, and there being no proof when the goods were sold, it was against all justice that a factor should answer interest for goods received before sold. Appeals from the decree of dismissal, and prays that Respondent may be ordered to answer, and proceedings stayed. Signed by Vincent Vincent; Countersigned Jo. Tremayne and Nich. Courtney. L. J., XIV., 401. [The Appeal was heard on 5 May. *Serjeant Tremayne* (for Appellant): We are aggrieved because they charge us with costs, which they ought not. *Sir Ambrose Phillippis* (for Appellants): We cannot take part of the answer, but the whole. *Sir Charles Porter* (for Respondent): Asked whether he has any other proofs than the answers, he says Yes. Mr. Parker lived in the East Indies and sends them goods and dyes. If we should not take notice of his answer it would be very extraordinary. *Mr. Serjeant Hutchins* (for Respondent): Produces Parker's book to prove the payment. 182*l.* is the debt

* The words in square brackets were left out, those in italics added in Committee.

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decreed. The question is whether the other debt is satisfied by this. Vincent had no books of his own, but he would have Parker's book to inspect, and in Parker's book it is entered. He has in his answer said he had placed it in Parker's account. After a reply, the Speaker reported, and on question whether the Decree should be affirmed, Resolved in the Affirmative, Contents 17, Not-Contents 15. Tellers, E. Manchester and E. Scarsdale. MS. Min., 5 May. L. J., XIV., 485.]

Annexed:—

- (a.) 16 Jan. Answer of Martha Parker, widow. Respondent in 1684, brought her bill against Sir Mathias, who being ordered to amend his answer as insufficient, stood on his privilege as a Member of Parliament, and died before any further answer. Respondent then brought a bill of Revivor, and charged assets against Appellant, who admitted them. The cross cause in respect of the pretended opium debt was heard on 26 Oct. 1688, when the Appellant failed to prove any debt or produce any books of account. Prays that the Appeal, which is vexatious, may be dismissed with costs. Signed by Counsel, viz., *Geo. Hutchins* and *Charles Porter*. Endorsed as brought in this day.
- (b.) 25 March, 1690. Petition of Vincent Vincent, Esq. Petitioner in January last presented his appeal against two decrees of the Lords Commissioners of the Great Seal, in one of which he was Plaintiff and in the other Defendant against Martha Parker. In spite of their Lordships' Standing Order of 19 March 1678, whereby all Appeals are to continue *in statu quo*, notwithstanding the prorogation or dissolution of Parliament, Petitioner has been committed to the Fleet, by order of the Lords Commissioners, for not performing the said decrees, and he is refused his discharge. Prays that the parties concerned in his imprisonment may be ordered to answer the contempt. [Referred this day to the Journal Committee. L. J., XIV., 437. The Committee, after reading the Orders of 29 March 1673, 10 Dec. 1678, 20 Nov. 1680, 27 May 1678, 19 March 1678, 22 May 1685, 8 Nov. 1689, (Long's case), and 7 Nov. 1689 (Duvall's case), agreed to report the precedents mentioned in the Order of 29 March 1673. Com. Book, 31 March 3 April 1690. L. J., XIV., 449.]
- (c.) 25 March 1690. Order of the House of this day on preceding. L. J., XIV., 437. *In extenso*.
- (d.) 2 April 1690. Petition of same. Petitioner, whose last petition now lies under the consideration of the Committee for Privileges, has meanwhile had notice of an order of the Chancery, made within the days of privilege and but fourteen days before the meeting of this Parliament, that he should be kept *in salvâ custodiâ* (although having the liberty of the Rules of the Fleet), and his estate sequestered for non-performance of the decrees appealed from. Prays that the order for sequestration and commitment may be discharged. L. J., XIV., 446.
- (e.) 2 April 1690. Order of the House this day on preceding Petition. L. J., XIV., 446. *In extenso*.
- (f.) 6 May 1690. Petition of Appellant. States that Petitioner's Counsel, at the hearing of the Appeal, apprehending the House to be satisfied that it was not just to decree on one part of the answer without admitting or giving liberty to prove the other, did not think it necessary, especially as he was desired to shorten

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his argument in regard of the more important business of the House, to press the other points which, if there had been the least ground to suspect a repeal upon the main point, would have likewise been discharged therewith. Prays that the order to pay costs and interest may be discharged, or that Petitioner's counsel may be heard on that point. [Read this day: nothing done on it. MS. Min., 6 May. No entry in L. J.]

(g.) Paper containing names of witnesses.

201. Jan. 2. Malmesbury, Town of, v. The King.—Copy writ of Error (dated 11 Dec. 1688) and transcript of Record, with tenor of Judgment (L. J., XIV., 402. *In extenso*) affixed thereto. Sets forth an Information exhibited in the King's Bench by Sir Robert Sawyer, Attorney-General in 2 Car. II. [1650] against Henry Witt, Alderman, and Hugh Towers, Edward Browne, Henry Knee, Thomas Burgess, John Hill, Henry Denning, John Turner, John Tull, Henry Arnold, William Wimbow and Richard Webb, Burgesses of the town of Malmesbury, for having for the space of a month and more usurped the privileges and franchises of a Corporation, and held office, &c., without warrant or authority from the King. The defendants having twice failed to appear, the Court gave judgment sequestrating their privileges and excluding them from office. [The Writ of Error, &c. was brought in this day. L. J., XIV., 402. The Cause was heard and Judgment reversed on 13 May. *Mr. Ward* (for the Town): We have assigned to Error, that the entering of the Judgment is erroneous, and we have prayed a *Certiorari*, and have not had the benefit of it; and then we will argue to both the Errors assigned. There is no Information of that Term. We now pray a *Certiorari*. *Mr. Browne* (for Defendant): We have pleaded *In nullo est erratum*. They ought to have done this before. MS. Min., L. J., XIV., 496. See Proviso in Corporations Restoration Bill, No. 209.]

202. Jan. 7. E. Radnor's Estate Act.—Amended draft of an Act to enable Charles Bodville, Earl of Radnor, to make a jointure and to raise a sum of money out of divers lands and tenements in the county of Cornwall. [Read 1st this day, Royal Assent 27 Jan. L. J., XIV., 405, 427. 1 W. & M. c. 15 in Long Calendar.]

Annexed:—

(a.) 13 Jan. Letter from Mr. R[ussell] Roberts to his brother, the Earl of Radnor, declaring his consent to the Bill. [Read in Committee this day. Com. Book.]

(b.) 14 Jan. Lords' Amendments to the Bill. The only amendment of importance is in the following portion of the Act, the words in the square brackets being omitted, and those in italics added. viz., "And be it further enacted by the authority aforesaid, that
" it shall and may be lawful to and for such person or persons to
" whom such mortgage or mortgages shall be made respectively,
" their respective executors, administrators, and assigns [by and
" with the consent of the said Charles Bodville, Earl of Radnor,
" or of such other person or persons, who for the time being shall
" be entitled to any estate in possession of and in the premises
" to be mortgaged from and after the decease of the same Earl, by
" virtue of the said recited Indenture of Settlement, such consent
" being in writing under the hands and seals of the parties who
" shall so consent] to make any lease or leases of the premises so
" to be to them mortgaged or any part thereof for life or lives or
" years in such manner as the same Earl can or may do by virtue

" of the proviso and power in the said recited Indenture contained
 " and herein-before mentioned and recited, [subject to] *so as such*
lease and leases be made bonâ fide for good and valuable con-
siderations in money to be taken and applied towards satisfaction
of the principal and interest money owing such mortgage and to
be subject to and charged with the like reservations of rent and
 " restrictions as are comprised in the power in the same recited
 " Indenture or in this Act contained, for the same Earl to make
 " leases as aforesaid, anything herein or in the recited Indenture
 " contained to the contrary notwithstanding." [Ordered to be
 reported this day. Com. Book, Jan. 9, 13, 14.]

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203. Jan. 10. *Harris v. Osbolston*.—Petition and Appeal of John and Elizabeth Harris. Charles I. by Letters Patent of 13 Feb. 1644, granted two newly erected lighthouses on the North and South Foreland to Sir John Meldrum, Knt., deceased, for a term of fifty years, together with the fees and profits payable by all ships passing those coasts for maintaining the said lights and lighthouses. Sir John assigned the remainder of this grant to David Spicer, who by his will in 1650 devised it to his wife Elizabeth for life, and after her death one moiety to his sister Anne Ely, and the other to the Appellant John Harris, giving an annuity of £10 out of the profits to Robert Osbolston, grandfather of the Respondent, to be helpful to his wife, the said Elizabeth. Osbolston, accordingly managed the lighthouses for her, and accounted to her for the receipts, but after her death in 1658, being one of Spicer's executors, he concealed Spicer's will, and obtained possession by indirect means of the Letters Patent and assignment, and he and his son and executor William, and his son's executors, Sir Peter Daniel and Robert Townson, during the minority of his grandson, Robert, the present Respondent, have since enjoyed the profits. William died after his wife Anne Ely, and left the Appellant, Elizabeth, executrix of his nuncupative will, which she duly proved, and also obtained letters of administration for Anne Ely, and these Appellants are now entitled in equal moieties to the profits together with arrears since the death of Elizabeth Spicer. To recover these, they brought in 1685 their bill in Chancery against Osbolston, Daniel and Townson, but it was dismissed by L. Chancellor Jeffreys in 1688. Appeal against this dismission, and pray that Respondents may be ordered to answer. Counsel signing are Charles Porter and Nicholas Courtney. [Presented this day. L. J., XIV., 408. The Cause was heard on 23 April. *Sir Charles Porter* (for Appellant) opens the case. *Mr. Ward* (for Appellants): We say the grant to Sir John Meldrum was in trust for David Spicer. We will prove the trust. The Patent was agreed, with Sir J. Meldrum's name. They proceed only for the £120 per annum. The trust of the whole we do not pretend to. *Mr. Serjeant Hutchins* (for Respondent): Mr. Osbolston's grandfather had possession 30 years. Ely's will was in 1660. In 16 years there was no bill. David Spicer's interest was but £8 per annum. Meldrum took up 1,000 marks of Spicer. The £220 per annum was to determine upon the payment of 1,000 marks. Thus it stood in 1637. We have had possession 30 years. Ely married Anne, the £200 was paid in. The length of time is much to be respected. *Sir Ambrose Phillipps* (for Respondent): Reads interrogatories of Edward Wells and David Hurst and a Bond proved in the Cause. The hearing was here interrupted by the King having come to give his assent to some Bills, after which Counsel were called in again. *Serjeant Hutchins* goes on with Ely's mortgage. Wells and Harris were witnesses to it. The bond we have that was given for the £200, John

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Harris's bond. We will prove this is a term for years, and it is very hard to put the proof of what the grandfather did upon us. The lighthouses were burnt down and rebuilt by the grandfather. Evidence read as to the £700 and £500 to the workmen for building the lighthouses. Evidence read to prove the lighthouses belonged to Richard Osbolston. *Sir Charles Porter* having replied and the Speaker reported, the House reversed the Dismission as to the 80*l.* a year, and ordered an account to be taken in Chancery (L. J., XIV., 471, MS. Min., 23 April).]

Annexed :—

- (a.) 2 Jan. Joint and several answers of Robert Osbolston, Sir Peter Daniel and Robert Townson. The Appellants have no title whatever to the lighthouses, and if the parties under whom they claim had any right, it was by colour of some writing in the nature of a mortgage, which has long since been satisfied. The Patent and lighthouses were long ago conveyed for valuable consideration to Robert, the grandfather, and William, the father, of the Respondent Osbolston. Prays that the Appeal, which is vexatious, may be dismissed with costs. *Signed* by Respondents. *Endorsed* as brought in this day. See L. J., XIV., 422.
- (b.) 24 March. Petition of Appellants for a day for hearing. L. J., XIV., 436.
- (c.) 15 April. Petition of Appellants for a short day for hearing and that Respondent may be ordered to produce certain deeds. L. J., XIV., 465.
- (d.) 24 April. Petition of Appellants that an authentic copy of a certain deed may be delivered by the Respondent to the Clerk of the Parliaments. L. J., XIV., 473.
- (e.) 3 May. Petition of Respondent, praying to be heard by Counsel as to rectifying the Judgment of the House and also as to giving a copy of a certain deed to the Respondent. L. J., XIV., 484.
- (f.) 9 May. Petition of Appellants. Respondent has failed to produce the deeds, as ordered. Pray for a further order to oblige him to obey. *Endorsed* as read this day, nothing done on it. [MS. Min. No entry in L. J.]
- (g.) 12 May. Petition of Respondent. Petitioner is advised that Appellant ought not to have a copy of the deed, as it no way concerns the account in question, but only relates to such estate to which Appellants have no manner of title, as has been adjudged by their Lordships. Prays that the order for its production may be discharged or Respondent heard by Counsel. L. J., XIV., 493.
- (h.) 22 May. Petition of Appellants. Pray that Respondent may immediately on oath produce the deed to the Clerk of the Parliaments and that the Court of Chancery may without delay proceed to take the account as directed. L. J., XIV., 505.
- (i.) 13 Nov. Petition of Appellants. The Master in Chancery has prepared his report, but there is a doubt whether the account is to include interest. Pray their Lordships either to direct interest or to hear Counsel and that Respondent may be ordered to produce a deed of 16 May 1637 made between Sir J. Meldrum and David Spicer, under which Petitioners claim. L. J., XIV., 551. [Counsel were heard on this Petition on 13 Dec. *Sir Ambrose Phillipps* (for Respondent): It is in the mortgagor's power to settle it for Sir John Meldrum. This interest will

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come in at 18 per cent. It comes to more than £2,300, which is the principal. Sir John Read's case instanced. He was not to have his £400 per annum and interest for it for the time it was unpaid. It appeared it was but a security. Here this gentleman will have 18 per cent. This gentleman that has vested 27 years should have interest. *Mr. Finch* (for Respondent): The deed by which we purchased is ordered to be set aside. What shall be done on this £80? That is the question. If you compute it at £80 per annum, it has been computed at what that comes to. This is a purchase: £444 is lent, a security for this is made a grant of £80 per annum. It is at the election of both. The £80 is defeasible to be void. This is but a mortgage, and is to be foreclosed by a Court of Equity. The Count of Chancery must appoint him a time to pay it in or be foreclosed. Shall we pay interest in a Court of Equity for a penalty, and shall they sleep so long and make us, an infant, an executor of an executor? It is multiplying a penalty upon us. It was never demanded before. *Sir William Williams* (for Appellants): The gentlemen have fancied a case,—that the original of this debt was but the product of such a debt. After this they would have had a handle. He reads the order of the House. I say your Lordships have declared it to be a stated debt. *Mr. Price* (for Appellants): This is nothing like a mortgage. This is only whether he will pay £80 per annum or the bare sum. This being a duty, it is certain therefore that interest lies in this case. Counsel withdraw, and the Speaker having reported, the House ordered the Master in Chancery to proceed to the Report for the £80 a year, according to the order of 23 April last, with interest. (L. J., XIV., 589. MS. Min., 13 Dec.)

(k.) 14 Nov. Petition of Respondent, for a day for hearing Counsel as to payment of interest. L. J., XIV., 552.

(l.) 1 Dec. Petition of Appellants. Respondent having obtained on 14 Nov. an order for hearing Counsel on the point of interest, the matter was afterwards referred by consent to M. Halifax and the Bishop of London, who on full hearing and advising with two of the Masters in Chancery of the practice in such cases, were satisfied that the account should be taken with interest. Prays that their award may be confirmed. *Endorsed* as read this day: nothing done in it. MS. Min. No entry in L. J.

204. Jan. 10. Trial of Peers.—Paper entitled "Precedents upon report from the Committee for Privileges," as follows: "In 15 Edw. III. all the Lords declare it to be their right not to be judged but by their peers in full Parliament. In 10 Edw. IV. this was the opinion of the great lawyer Littleton. Chief Justice Hastey in the time of Hen. VII. held the same, and so did Brook and Fitzherbert after him. There is a year book in the time of Hen. IV. which gives circumstances to the trial of Peers out of Parliament; but the Records of that time falsify the book. The first precedent was in the case of D. Buckingham in the time of Hen. VIII., who was hunted down by Cardinal Wolsey." *Undated*. [Read in the House this day. (MS. Min.) On 2 Jan. the House ordered the Report of the Committee for Privileges concerning the trial of Peers * to be made on the 9th inst. (L. J., XIV., 402): The Report, which had been agreed to, after debate, by the

* The Journals do not state when this subject was referred to the Committee.

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Committee on 31 Dec.* was made to the House this day, when the House, on motion that a day might be appointed to consider it, appointed the 14th for that purpose, all the Judges to attend (*ib.* 409. MS. Min.).—On 14 Jan. the Report was read, together with the Precedents cited above. After debate,† the *Question* was proposed, That it is the ancient right of the Peers of England to be tried only in full Parliament for any capital offences. Leave given to dissent. *Question*: Whether the debate of this *Question* shall be now adjourned? Resolved in the Negative. Contents 24, Not-Contents 34; Tellers, E. Stamford and E. Nottingham. Then the original *Question* was put, and resolved in the Affirmative. Contents 38, Not-Contents 20; Tellers, L. North and L. Clifford. *Ordered* That the Resolution be entered on the Roll of Standing Orders. (MS. Min., L. J., XIV., 412.)—On 17 Jan., the House being moved that the Order of the 14th inst. might be explained as to the extending to Appeals of Murder, the Declaration proposed was read, excepting from it any Appeal of Murder or Felony, and agreed to and ordered to be entered on the Roll of Standing Orders. (MS. Min., L. J., XIV., 418.)]

205. Jan. 10. *Smith v. Blight*.—Petition of Dame Anne Smyth, widow, and executrix of Sir James Smyth, Knight, deceased. Petitioner's late husband devised his estate in trust for payment of his debts and the surplus to Petitioner, who brought a portion of £16,000. The Respondent Francis Blight having brought a Bill in Chancery for satisfaction out of the estate for a debt of £200 on a bond, entered into by Sir James Smyth to him in trust, as was pretended, for his brother Charles, deceased, Petitioner brought a cross-bill against the Respondents to discover on what account the bond was entered into. Respondents in their answer insisted that the money was due for wares sold, sums lent and services done, but never claimed anything beyond the £200. Petitioner afterwards found among her late husband's papers an acquittance for the bond, but on a trial at law before L. C. Justice Wright, when Respondents for the first time gave some kind of evidence of another debt, the jury found that the bond was not satisfied. The Court of Chancery, on 21 May 1688, directed a new trial, but Respondent afterwards obtained a rehearing, and the Court on 8 July 1689, made a decree discharging the new trial and ordering Petitioner to pay what should be found due on an account, without any benefit of the said acquittance. Appeal from this decree, and pray that Respondents may be ordered to answer. *Signed* by Appellant; *Countersigned* Geo. Hutchins and Chas. Porter. [Read this day, on report from the Committee for Petitions. (L. J., XIV., 408. Pet. Book, 8 Jan.) The Cause was heard on 12 Dec. *The Solicitor-General* (for Appellant): They begin to set afoot two debts. They never went to try whether this bond was satisfied or not. There is no sort of evidence so dangerous as a confession. This Emanuel Thomas was a man in a necessitous condition. We have an acquittance under the hands of Thomas for £200. They must prove two debts. The question is whether this bond was discharged or not. *Serjeant Tremayne* (for Respondent): I hope here is

* Priv. Book, 31 Dec. 1689. The minutes contain this entry immediately before the Report: "It being moved That four Lords may be commissioned out of Parliament to regulate the Courts in Westminster Hall, &c., the Debate thereof is adjourned till the next meeting." Nothing further recorded in Priv. Book as to this matter. The Report is given *in extenso* in L. J., XIV., 409.

† An entry in the MS. Min. states, "No Lord to go to the fire without leave during this debate."

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a very good decree. Blight has a bond from Sir James Smyth. Says Thomas: I have received £200 for a bond, and why should we mention in the Bill the bond received? £200 paid on a bond; the receipt 10 June, 1665. *Mr. Row* (for Respondent): The debt was due and had been here a long time, and they may be kept out of their money a long time. The Solicitor-General having replied, and the Speaker reported, the House dismissed the Appeal. (L. J., XIV., 587. MS. Min., 12 Dec.)]

Annexed:—

- (a.) 27 March 1690. Petition of Appellant. Petitioner, notwithstanding her Appeal, has been prosecuted during the dissolution, upon the decree appealed from. Prays that the Appeal and all orders thereon may be revived and the Respondents ordered to answer by a short day. L. J., XIV., 440.
- (b.) 5 April. Petition of Elizabeth and Francis Blight. Pray for three weeks further time to answer, Petitioners not yet having had personal notice of the order of 27 March and their papers being in Cornwall. L. J., XIV., 450.
- (c.) 21 April. Answer of Francis Blight and Elizabeth Blight, widow, executrix of Charles Blight, deceased. Proof was given at the trial of frequent demands made and promises of payment by the late Sir James Smith, an officer of the Guards and Member of Parliament, at dates subsequent to that of the alleged receipt, and also of the existence of another debt. The Court of Chancery on 24 Jan. 1687 decreed Appellant to pay what remained due on the bond with interest, which was found by the Master to amount to £430 13s. 10d. Appellant not proceeding to a new trial, as directed by the Court of Chancery in 1688, Respondents petitioned the Lords Commissioners for a rehearing, and obtained the decree complained of, it being fully shown that the acquittance was not given for the money due on the bond in question. Pray that the Appeal may be dismissed with costs. Signed Ambrose Phillippis.
- (d.) 26 Nov. Petition of Appellant for a day for hearing L. J., XIV., 567.
- (e.) 26 Nov. Petition of Respondents. The Appeal is against a decree in Chancery for a debt of £200, due by bond entered into in 1663 by Sir James Smith, the Appellant's husband to the Respondent Francis Blight, in trust for the husband of the Respondent Elizabeth Blight, and the sole question was whether the bond was satisfied. Pray that the Appeal, which is merely for delay, may be dismissed, and that the Petitioners may be at liberty to proceed on the account directed by the Court of Chancery. L. J., XIV., 567.

206. Jan. 10. Lady Eliz. Hamilton. — Petition of the Lady Elizabeth Hamilton. Petitioner's late husband, John Shelbery, became bound with the late Earl of Carbery and Lord Francis Vaughan, upon their request and for their own debts to several persons for considerable sums of money, for which he was sued to judgments and executions and was forced to leave his trade and sell his own estate to pay them off. On 24 July 1677 there was due to him £1,375 14s. 8d., the interest of which to 24 Dec. 1689 together with 150*l.* more which Petitioner lately paid for the said Earl to one Mr. Saunders, and £140 more due by bond dated 10 Dec. 1663 from L. Francis Vaughan, amounts in the whole to £2,690 2s. 2d. Petitioner has often applied to the present

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Earl of Carbery, but without effect. Prays that her cause may be heard. [Rejected this day on report from the Committee for Petitions. L. J., XIV., 408. Pet. Book, 8 Jan.]

207. Jan 11. French Bay Salt Bill. — Commons' Engrossment of an Act for Preservation of French Bay Salt taken as prize from being destroyed. Whereas by an Act made in the first Session of this present Parliament, intituled An Act for prohibiting all Trade and Commerce with France, it is (amongst other things) provided,* That from and after the 24th day of August now last past, no French wines, vinegar, brandy, linen, silks, salt, paper or any other goods or commodities whatsoever, of the growth, product or manufacture of any of the dominions or territories of the French King, should during or within the term of three years, to be accounted from the said 24th day of August, or at any time or times before the end of the first Session of Parliament next after the expiration of the said three years, be brought in by land or imported in any ship or ships, vessel or vessels whatsoever, into any port, haven, creek or other place whatsoever in the Kingdoms of England or Ireland, the Dominion of Wales or Town of Berwick-upon-Tweed, or Isles of Jersey, Guernsey, Alderney, Sark or Isle of Man from any place or port whatsoever, either mixt or unmixt with any commodity of the growth or product of any other nation, place or country whatsoever; And that if any French wines, brandy, vinegar, linens, silks, salt, paper or other commodities whatsoever, mixt or unmixt, should be imported contrary to the said Act, the same should be forfeited to their Majesties, and should be destroyed in such manner as in the said Act is appointed; And that if any of the commodities aforesaid, imported contrary to the said Act, should during the said term of three years or before the end of the first Session of the next Parliament after the end of the said three years, upon any pretence whatsoever, be vended, sold, retailed or uttered, or be found or remain within the Kingdoms of England or Ireland, Dominion of Wales or Town of Berwick-upon-Tweed or Isles of Jersey, Guernsey, Alderney, Sark or Isle of Man, the same should and might be seized by any person or persons whatsoever, in whose possession or custody soever they should or might be found, and information thereof and judgment and execution for the destruction of them should be had, made and given as in the said Act is expressed; And further that from and after the first day of September now last past none of the goods, commodities or manufactures prohibited by the said Act should be imported from the Islands of Guernsey, Jersey, Alderney, Sark and Man or any of them into any of the ports, creeks, or havens of England, Ireland, Dominion of Wales or town of Berwick-upon-Tweed under the penalties and forfeitures contained in the said Act; Now forasmuch as Bay Salt of the product and manufacture of France and of the dominions and territories of the French King is of very great use for the preserving of victuals to be provided for their Majesties' Navy, whereby it will be more for their Majesties' service and the interest of the kingdom that such Bay Salt as shall be imported contrary to the said Act and shall be forfeited by virtue thereof be applied to the use and purpose aforesaid than that the same should be burnt and destroyed, as is directed by the said Act; Be it therefore enacted, &c., That all such Bay Salt of the product or manufacture of any of the dominions or territories of the French King that shall be imported or brought into, or be sold, retailed

* 1 W. & M. c. 34, §§ i., ii., and xiv.

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or uttered, or be found or remain in any port, haven or creek or other place whatsoever in the Kingdoms of England or Ireland, the Dominion of Wales or Town of Berwick-upon-Tweed or Isles of Jersey, Guernsey, Alderney, Sark or Isle of Man, contrary to the said recited Act, and shall be found or adjudged (according to the directions in the said Act) to be of the product or manufacture of any of the dominions or territories of the French King, or imported contrary to the said Act, shall be forfeited to their Majesties according to the said Act, and shall be applied for the use and service of their Majesties' Navy; and for that purpose shall be delivered unto the Commissioners for the victualling of their Majesties' Navy or to some or one of them or to such person or persons as shall be authorized to receive the same, and shall not be burnt or destroyed as in and by the said Act is directed, anything therein to the contrary notwithstanding.

And be it hereby further enacted by the authority aforesaid, That after the seizure of any such Bay Salt, the person or persons by whom the same shall be so seized, shall forthwith give notice unto one or more of the Commissioners for the victualling of their Majesties' Navy of such seizure, together with a particular account of the nature, quantity and quality of the said Salt so by him or them taken or seized, and of the place where the same is lodged and remains, as also of the time when the same was so brought in, and after such proceedings have been thereupon had, as by the said recited Act are directed, if the same shall be found or adjudged to be of the product or manufacture of any of the dominions or territories of the French King, or imported contrary to the said Act, judgment shall immediately be passed thereupon and the same shall be forthwith delivered to the said Commissioners for the victualling of their Majesties' Navy or to such person or persons as they shall appoint, for the use and service of their Majesties' Navy, and to be applied to no other use or purpose whatsoever, under the penalty of five shillings for every gallon of salt that shall be sold or otherwise disposed of than as by this Act is directed, to be recovered by such person as will sue for the same in any of their Majesties' Courts of Record at Westminster by action of debt or information.

And be it also enacted by the authority aforesaid, That such person or persons, who shall at any time hereafter seize any such Bay Salt (other than such as is or shall be brought in as prize by their Majesties' ships) of the product or manufacture of any of the dominions or territories of the French King, as imported contrary to the said Act, shall after the condemnation thereof, and upon the delivery of the same to the Commissioners for the victualling of their Majesties' Navy aforesaid, have and receive to his or their own use, as a reward for such his or their seizure, the sum of thirty shillings for every weigh of Bay Salt so by him or them seized and delivered as aforesaid, which the said Commissioners are hereby authorized and required to pay and to charge the same to their Majesties' account; and also that the sum of forty shillings be by the said Commissioners for victualling their Majesties' Navy paid to their Majesties' Commissioners for Prizes for every weigh of Bay Salt taken by their Majesties' ships of war and condemned as good prize, and by them delivered to the Commissioners for victualling their Majesties' Navy as aforesaid.

Provided nevertheless, that if any Bay Salt brought in as prize by their Majesties' ships shall be embezzled or any way disposed of other than to the Victuallers of their Majesties' Navy as aforesaid, the same may be seized on by any person or persons, and that on delivery thereof by such seisor to the Commissioners for victualling their Majesties' Navy, the sum of thirty shillings for every weigh of Bay Salt shall be

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paid to such person or persons that so seized and delivered the same, and not to the Commissioners for Prizes.

And be it further enacted by the authority aforesaid, That all such Bay Salt imported contrary to the said Act, and which hath been already seized by virtue thereof, or taken as prize by any of their Majesties' ships of war, and upon which judgment or condemnation already hath been or shall or may be given, and which as yet is not burnt or destroyed, shall after the condemnation thereof, according to the directions of the said Act, be forthwith delivered to the said Commissioners for the victualling of their Majesties' Navy or to such person or persons as they shall appoint for the service aforesaid, and shall not be burnt or destroyed as by the said Act is directed.

Provided nevertheless, that the said recited Act, and every branch, article and clause therein contained, shall be duly observed and pursued in every other respect, save only as to the burning and destroying such Bay Salt as aforesaid, and that every person and persons that shall in any wise act or do contrary to the true intent of the said recited Act in any other particular than is dispensed with in this present Act, shall be liable unto and shall incur and forfeit all such penalties and forfeitures as are in and by the said recited Act in that behalf expressed and contained.

And whereas in the Act made in the late Session of this Parliament, intituled an Act for prohibiting all trade and commerce with France, there is contained a certain Clause or Proviso, whereby it is enacted that Gilbert Heathcote and Arthur Shallett of London, Merchants, or either of them have leave to import into the Port of London any quantity of Spanish brandy not exceeding 200 tuns at most, paying to their Majesties all duties payable for the same before the said late Session of this Parliament, importing the same at or before the 25th of March 1690; And forasmuch as for want of convoy, the said Gilbert Heathcote and Arthur Shallett have not been able to send out such goods as they have provided for Spain, nor to bring home their said brandy from thence, and the time limited by the said Act being now so far spent, that it is impossible for them to import the said brandy into the Port of London within that time, Be it therefore enacted by the authority aforesaid, that the said Gilbert Heathcote and Arthur Shallett or either of them have leave to import the said 200 tuns of Spanish brandy into the said Port of London at or before the 20th day of September 1690 under the same conditions, restrictions and limitations as in the said Act for that purpose are expressed and mentioned and no other. *Parchment Collection.* [Brought from the Commons this day, but never read. L. J., XIV., 410.]

208. Jan. 11. Corporations Restoration Bill.—Commons' En-grossment, partly amended by the Lords,* of an Act to restore Corporations to their ancient Rights and Privileges. It is as follows:—

Whereas, in pursuance of a wicked design to subvert the constitution of the English Government and the Protestant religion established by law, and instead thereof to introduce arbitrary power and popery, endeavours have been used to corrupt parliaments, and other detestable projects have been set on foot, particularly the destroying bodies politic and corporate and the rights, liberties and franchises of the cities, towns, boroughs and cinque ports within the Kingdom of England and dominion of Wales and town of Berwick-upon-Tweed, in order to deprive such of them as had right to send representatives

* The only amendments occur in Clause 1.

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to serve in Parliament of their ancient freedoms, right and method of Elections, and to subject all the said cities, towns, boroughs, cinque ports and bodies politic and corporate to the will and pleasure of the Crown by taking from them the right of freely choosing and constituting magistrates and officers for the execution of justice and for the government and management of their common concerns and other their undoubted rights, liberties and franchises, and the same wicked design hath been further pursued by destroying the charters, rights, liberties and privileges of the several plantations and Colonies in New England, and other parts beyond the seas belonging to the Crown of England. And whereas, for the attaining of these pernicious ends, divers ill disposed persons, who were members of the said cities, towns, boroughs, Cinque ports, plantations, colonies and bodies politic and corporate, contrary to their oaths and the trust reposed in them by law, have been prevailed upon to make or procure to be made certain surrenders or pretended surrenders, of the charters, prescriptions, customs, rights, liberties and franchises thereof and divers grants and conveyances of the lands and hereditaments to the same belonging. And where such pretended surrenders, grants or conveyances could not be obtained, writs of Scire Facias and Quo Warranto, and informations in the nature of a Quo Warranto upon divers pretences have been brought against the said bodies politic and corporate, or against some or all of the members of the said bodies politic or corporate, cities, towns, boroughs, Cinque Ports, Plantations, and Colonies, for what they had done, or claimed to do, as members of the same respectively, by charter, customs, prescription or otherwise, and thereupon judgments have been entered, or Rules for judgment given that the said bodies politic and corporate, or the liberties, privileges and franchises of being a body politic and corporate, or other the rights, liberties, franchises, prescriptions or customs of the said cities, towns, boroughs, Cinque Ports, Plantations and Colonies respectively, or of the members of the same should be seized into the King's hands as forfeited, or should be forfeited or otherwise taken away or to some such or the like effect. And divers new grants, charters and commissions have been granted to or imposed upon the said cities, towns, boroughs, Cinque Ports, plantations and Colonies, or the inhabitants or members thereof, or of such bodies politic and corporate to the destruction, diminution, or prejudice of their former rights liberties, and franchises. All which proceedings were unjust and illegal and did apparently tend to the subversion of the laws and the constitution of the Government both in Church and State. Be it therefore [declared and]* enacted by, etc., that all surrenders or instruments purporting to be surrenders of any bodies politic or corporate, or of the charters, prescriptions, customs, rights, liberties, and franchises of any city, town, borough, Cinque Port, plantation or Colony, or of any of them, and all grants and conveyances of the lands and hereditaments belonging to them or any of them, made or pretended to be made to their late Majesties King Charles the Second or King James the Second or to any Court Palatine or person having the authority or Jurisdiction of a Court Palatine in the reigns of their late Majesties King Charles the Second or King James the Second [were and are illegal and void, and]* shall be taken and adjudged to be null and void to all intents constructions and purposes whatever.

And be it further enacted and declared that all writs of Scire Facias and Quo Warranto and all informations in the nature of a Quo Warranto sued out or prosecuted in any Court or Courts against any bodies politic

* These words were omitted in Committee and on Report.

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or corporate, or against any person being members of any of the said cities, towns, or boroughs, Cinque Ports, plantations or Colonies or bodies politic or corporate for what they or any of them have done or claimed to do as members of the same respectively, and all proceedings, judgments and executions thereupon had at any time since the five and twentieth day of March in the year of our Lord 1675, shall be void and shall be taken and adjudged to be null and void to all intents, constructions and purposes whatsoever, as if all and every the said proceedings were in this Act particularly recited and set down and severally and expressly declared to be reversed, annulled and void.

And be it also further enacted and declared that all charters of incorporation, letters patents, and grants under the great seal of England made or granted by the said King Charles the Second, or King James the Second, or under the Seal of the Duchy of Lancaster, or of any County Palatine, by any Court Palatine or person having the authority or jurisdiction of a Court Palatine upon and after such surrenders or pretended surrenders made or judgments or rules for judgments given, pronounced or entered upon, or in any Scire Facias, Quo Warranto, or information in the nature of a Quo Warranto or upon and after any seizure of any body politic or corporate or the franchises or liberties thereof, for any defect, or pretended defect, in election of Magistrates or otherwise unto any body politic or corporate, or to any of the said cities, towns, boroughs, Cinque Ports, plantations or Colonies, or to any the members or inhabitants of the same, and also all charters of incorporation made or granted since the said five and twentieth day of March in the year of our Lord 1675, for the incorporating of any borough or the inhabitants of any borough which never was before incorporated and which at the time of such charter granted had right to send members to serve in Parliament, are and shall be void and null, and shall be taken and adjudged to be void and of none effect to all intents, constructions and purposes whatsoever.

And be it also further enacted and declared, that all and every the said bodies politic and corporate, cities, towns, boroughs, Cinque ports, plantations and colonies shall stand and be in such and the same state, condition and plight, to all intents and purposes, as they and every of them respectively were or was six months before any such surrender or pretended surrender made, or before any such writ of Scire Facias, or Quo Warranto on information in the nature of a Quo Warranto was sued out or prosecuted, or before any such seizure was made, or before any such Charter of Incorporation was granted to any such borough not before incorporated. And that all and every the freemen, members and inhabitants of the said bodies politic and corporate, cities, towns, boroughs, cinque ports, plantations, and Colonies respectively may proceed in all things to act according to their respective charters, customs and prescriptions in such manner as they did, or might have done at any time within the space of six months before such surrender made or writ of Scire facias or Quo Warranto, or information in the nature of a Quo Warranto sued out or prosecuted or within the space of six months before such seizure made, or before such charter of incorporation granted to any such borough not before incorporated. And also that the said bodies politic and corporate, cities, towns, boroughs, cinque ports, plantations and colonies, shall be and are hereby restored to and shall have, hold, and enjoy such, and the same prescriptions, customs, rights, liberties, and franchises, and all and every the lands, tenements, hereditaments, rights, titles and estates which they and every of them of right had, or might have or claim respectively, at the time of such surrender or pretended sur-

render, grant or conveyance made, or at the time of such writ or information sued out or prosecuted, or at the time of such seizure made, or charter of incorporation granted to any such borough not before incorporated as aforesaid, and may in all pleadings and otherwise make title to and have advantage of the same, without taking notice of any such surrender, grant, conveyance, seizure, scire facias, Quo Warranto, or information in the nature of a Quo Warranto, or any judgment or proceedings thereupon, and in such and the same manner, as if no such surrender, seizure, grant or conveyance had been made, or writ or information sued out or prosecuted, notwithstanding the making, acknowledging, or inrolling of any such surrender or pretended surrender, or notwithstanding any such writ or information or any proceedings, judgments, or execution thereupon had, given or executed, or notwithstanding any such seizure made, or notwithstanding any grant, charter, or commission granted, or issued out since the time of such surrender or seizure made or writ, or information sued out or prosecuted, or notwithstanding any omission, neglect, or defect since such new charter, grant or commission, granted or issued out in not choosing of magistrates or officers, or not observing any other matter or thing, which by charter, custom, prescription or otherwise, ought to have been done and performed.

Provided always and be it enacted that if the number of the magistrates or members of any body politic or corporate, city, town, borough, cinque port, plantation or colony hereby restored or declared to be restored, be not sufficient to proceed and act in the election or admission of magistrates or officers and otherwise, according to their respective charters, usages, or prescriptions, that in such case so many of the said members as are living, together with all other persons who were freemen of the respective corporations three months before such surrenders or seizures made or scire facias, or Quo Warranto, or informations in the nature of a Quo Warranto sued out, or in case none of the said members be then living or qualified to act, then such persons as were freemen as aforesaid, or the major part of them being then present, shall be, and are hereby empowered, forthwith to proceed to the election and admission of such and so many magistrates, officers, and members as are required and necessary to act, according to their respective charters, usages or prescriptions, and to administer to them such oaths as are usual and requisite in such cases. And that the said persons so elected and sworn, together with the said other members, shall proceed and are hereby required and empowered to proceed to fill up, and complete their numbers, according to their respective charters, usages, or prescriptions.

And whereas divers charters heretofore granted to bodies politic, and corporate, cities, towns, boroughs, cinque ports, plantations and colonies are cancelled or lost, whereby great mischiefs may ensue, unless a remedy be provided in that behalf; Be it therefore enacted that all such bodies politic and corporate, cities, towns, boroughs, cinque ports, plantations and colonies, or any person or persons claiming under the same, respectively shall and may at all times hereafter in any suit, pleading, or otherwise use, plead, and produce any exemplification or constat under the great seal of England of any charter not declared to be void by this present Act, which shall be as good and available to all intents as if such charter were pleaded, used, or produced. And such exemplification or constat shall be from time to time granted and issued out (upon request and payment of usual fees) to any such body politic and corporate, cities, towns, boroughs, plantations and colonies, or any member or members thereof, or any person or persons claiming under the same respectively.

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And be it further enacted that all leases or grants of any lands, tenements and hereditaments or other things belonging to any of the said bodies politic or corporate, cities, towns, boroughs, cinque ports, plantations and colonies since the time of such surrenders, or pretended surrenders or seizures made, or judgments given by any person or persons acting by colour or pretence of such new charter, letters patents, or grant, and pursuant to any power therein mentioned or expressed (such grants having been made *bonâ fide*, and for good and valuable considerations) and such leases having been made *bonâ fide* and for good and valuable considerations, and at and under the usual and accustomed rents or payments or more, shall be as good and effectual as if the same had been made by the bodies corporate and politic, cities, towns, boroughs, cinque ports, plantations and colonies hereby declared to be restored respectively.

Provided nevertheless, that if the said bodies politic and corporate, cities, towns, boroughs, cinque ports, plantations and colonies hereby declared to be restored before the first day of December in the year of Our Lord 1691, shall offer to come to an account with such lessee or grantee or their assignee or assignees, and shall pay down or tender to them respectively so much money as they respectively paid for their respective leases or grants, or assignments, or have laid out in improvements upon the lands or hereditaments so leased or granted, with interest for the same after the rate of six pounds for a hundred pounds by the year (deducting all profits over and above the said rents reserved and paid which have been made or received by the said lessees and grantees or assignees), that then and in such case, such leases and grants or assignments shall be and are hereby declared null and void.

And be it further enacted that the said bodies politic and corporate, cities, towns, boroughs, cinque ports, plantations and colonies hereby restored, shall have the benefit of all rents, reservations, conditions, covenants and agreements contained in every such grant or lease which by this Act is appointed to continue and be effectual, and the like remedy for the not paying nor keeping, or breach thereof, as if every such grant or lease had been made before any such surrender or pretended surrender or seizure made or writ or information sued out or presented, as fully as if the same had been made by such persons or by the charters, customs or usages of the respective cities, towns, boroughs, cinque ports, plantations, colonies or other bodies politic and corporate [*? that*] had right or power to make the same.

Provided always, and it is hereby enacted that every person who hath taken upon him or executed any office or employment in any city, town, borough, cinque port, plantation or colony or other body politic or corporate, in pursuance of and according to the manner and form appointed by any such new charter, letters patents, grant or commission, shall be and is hereby indemnified for so doing, in such manner only as if such new charter, letters patents, grant or commission had been good and effectual in law and not otherwise nor in any other manner. So always nevertheless as that every person shall be accountable to the respective bodies politic and corporate hereby declared to be restored for all moneys, goods, chattels and other things since the five and twentieth day of March in the year of Our Lord 1680, received, taken or disposed of by reason or colour of such office or employment which did belong, or of right should have come to or to the use of the bodies politic and corporate, hereby declared to be restored or to or for any charitable or public use within or under the

jurisdiction or management of such corporations, bodies politic or corporate respectively.

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Provided also and be it enacted, that no suits, proceedings, judgments or executions begun, had, made or given in or by any Court or Courts held in or for any of the said cities, towns, boroughs, cinque ports, plantations or colonies by colour or pretence of such new charters, letters patents, grants or commissions, shall be avoided for want or defect of any legal power in the said court or courts, but that the same shall be of such and no other force, effect and virtue as if such court and courts had acted by a good and legal authority.

And be it further enacted, that every person who hath been admitted as a freemen by any mayor, bailiff and other officers or persons pretending power to make freemen by colour of any such new charter, grant or commission, shall be deemed and taken to be a freeman and to have the privileges and advantages of a freeman. Provided always that such freeman shall not have any right of giving a suffrage or vote in the election of members to serve in Parliament or in the election of the Magistrates for such body politic or corporate, unless he had before served seven years as apprentice, or had otherwise a right of demanding to be made a freeman of such body politic or corporate, according to the respective charters, customs and prescriptions hereby declared to be restored, or shall be hereafter lawfully made a freeman of the same.

Provided that nothing in this Act shall extend to the Caribbee Islands (commonly called the Sugar Islands) or to make void any surrender of the said Islands, or the government thereof made to his late Majesty King Charles the Second, but that the said islands and the government thereof shall be held enjoyed and exercised by their Majesties and their successors, as fully as the same were held, enjoyed and exercised by the said late King Charles the Second at any time after the said surrender (anything in this Act contained to the contrary notwithstanding).

Provided also that nothing in this Act contained shall extend to prejudice their Majesties or their successors in any their rights or titles to the Bermudas, Maryland, Pennsylvania, Carolina, New York or Long Island, or any plantation or Colony within the same or any of them; but that the Bermudas, Maryland, Pennsylvania, Carolina, New York and Long Island and the plantations and Colonies therein shall remain and be in the same state as if this Act had not been made and not otherwise.

And be it further enacted, that the Oath and Declaration particularly set down and specified in the Act made in the thirteenth year of the reign of his said late Majesty King Charles the Second, entitled an Act for the well governing and regulating of corporations or either of them, shall not hereafter be tendered to, or taken or subscribed by any person or persons whatsoever.

Provided also that nothing in this Act contained shall extend to give any right to any person or persons whatsoever to or in the Salt Springs in Droitwich, in the county of Worcester, but that the same shall remain in the same state as if this Act had never been made and not otherwise.

And be it enacted by the authority aforesaid, that the letters patents under the Great Seal of England made by his late Majesty King Charles the Second, bearing date the tenth day of February, in the three and thirtieth year of his reign, whereby the inhabitants of the borough or town of Chipping Sodbury, within the manor of Sodbury, in the county of Gloucester were incorporated by the name of the mayor, aldermen

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and burgesses of the borough or town of Chipping Sodbury (being imposed upon the inhabitants of the said borough or town against the will of the major number of them, and to the prejudice of the rights of the lord of the said manor) be, and are hereby declared to be from henceforth void to all interests and purposes whatsoever.

And whereas in divers charters granted by King Charles the Second to cities, towns corporate and bodies politic (in cases where no surrenders of any former charters were made) certain clauses were inserted whereby the nomination, appointment or approbation of the mayor, recorder, steward, town clerk or other principal magistrates, governors or officers was reserved to the Crown in such manner as in the said charters respectively is expressed; Be it enacted and declared that all such clauses are and are hereby adjudged and declared to be null and void, to all intents, constructions and purposes whatsoever, and that all and every the said cities, towns corporate, and bodies politic shall have right to nominate, elect, and constitute, and shall and may proceed from time to time to nominate, elect and constitute their respective mayors, recorders, town clerks and other principal magistrates, governors and officers in such manner as before such charters granted they did or might have done respectively, anything in the said charters contained to the contrary thereof in anywise notwithstanding.

And be it further enacted, that the said bodies politic and corporate restored by this Act respectively shall have the benefit and advantage of all bonds and securities for moneys made or given to any person or persons who did claim to be a body politic or corporate, by colour of any charters of incorporation which by this Act are declared to be void, or to any person or persons in trust for them or their use, and may sue for and recover the same in such manner to all intents and purposes, as if the said bonds or securities had been made or given to the said bodies politic and corporate hereby declared to be restored.

Provided always and be it enacted that no person having acted as a member of any body politic or corporate since their Majesties' accession to the Crown, who by virtue of an Act of this present Parliament intituled An Act for the abrogating of the oaths of Supremacy and Allegiance and appointing other oaths, ought to have taken the oaths appointed and required to be taken by the said Act and hath refused or neglected to take the said oaths, shall be restored to any office, freedom or privilege by this Act or have any benefit or advantage thereof.

And forasmuch as the case of the ancient corporation of mayor and burgesses of the town of Nottingham hath been so different from the case of the generality of corporations hereby restored that it cannot well be so fully provided for by this general Act, as by a particular law; Be it therefore enacted, that nothing in this Act contained shall be construed to extend to the town of Nottingham, or to the ancient corporation of mayor and burgesses of the town of Nottingham, anything in this Act contained to the contrary in anywise notwithstanding.

Provided that nothing in this Act contained shall be construed to make good or to confirm any grant, alienation or lease made without impeachment of waste of any part of the lands belonging to the borough of Malmesbury by colour or pretence of any new charter granted by the late King James the Second.

Provided nevertheless that this Act or anything herein contained (other than the clause touching the not tendering, taking or subscribing the Oath and Declaration set down and specified in the Act intituled An Act for the well governing and regulating of corporations or either of them) shall not extend nor shall be construed to extend to the corporation

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of the city of London, or to any of the companies or corporations within the same, but the same are and shall be wholly excepted out of this Act, anything herein contained to the contrary notwithstanding. *Parchment Collection*. Brought from the Commons and read 1st this day (L. J., XIV., 410).* The proceedings in C. W. H. on the Bill are thus recorded:—18 Jan. E. Mulgrave in the chair. The Bill read through. Title read and agreed to. Preamble read and postponed. First enacting clause read. Judges asked, whether or no a surrender, considered as a surrender, be good and valid in law?† *Holt, C. J.*: A surrender makes all void and cannot be for the good of the Corporation. It dissolves it. *Pollexfen, C. J.*: The being a Corporation is but a capacity for a number of men to act as one person in buying, taking or reserving lands, etc. The town of Gloucester was in faction; they could not agree, and there was a surrender. I believe there is no such thing as a surrender to be found. If you surrender the Corporation, the lands given to any corporation revert to the donor. House resumed. E. Mulgrave reported as in L. J., XIV., 419 (MS. Min., 18 Jan.).—22 Jan. The order for the Judges giving their opinions read *Holt, C. J.*: Whether a corporation may be legally surrendered is a question that has lately been debated in Westminster Hall. I am of opinion that a Corporation may surrender, and thereby the Corporation is dissolved. I take it to be a franchise from the Crown and may be surrendered. It is a creature created by policy. Where is the harm if the King consents and the corporation too? A corporation is made for need; in times they are not fit. The authorities are two. 1st, there is the case in Dyer, 273.‡ The deanery of the Cathedral Church of Wells was surrendered in the time of Hen. VIII., and so dissolved. This had the confirmation of an Act. Then there is the case of the Deanery and Chapter of St. Patrick in Ireland in Dyer, 282.§ This belonged to the Archbishop of Dublin. They sent into England to have the opinion of the Judges. Justices Catlyn, Dyer, Saunders, Welshe, and Carus certified this to the Deputy of Ireland. As to Coke 3 Rep.|| there will be something urged. The Dean and Chapter of Norwich in Edw. VI. surrendered their Charter. Query, whether they surrendered the Corporation? That a Corporation is dissoluble all the Books say. Some say: This is but a capacity. This is more; this is an entity; they have power to act. *Pollexfen, C. J.*: I am sorry we differ. It is not questioned, but it may be dissolved by death or cessation—not choosing. A dean may resign. It is a capacity given them to act and so to act; [*Illegible.*] 10 Rep. 62 it is set up only for such an intent and purpose. Rolles, Title "Corporation." The reserved rent makes them a Corporation. This to shew you there is a capacity, so qualified that they are only able to act and do and no further. It is made in imitation of a natural body; so no more than he can surrender the capacity no more can the Corporation. Is there anything else like it?—The most like is an alien made denizen. An alien cannot purchase, etc. By a surrender he cannot destroy this; and so upon an attain a man forfeits and then is restored; it cannot be surrendered again.

* It was on reading this Bill a first time that the House made the Order that Breviates of all Bills be made for the future. L. J., XIV., 410. MS. Min., 11 Jan.

† The question first proposed, but struck through, was, whether all voluntary surrenders made since the reign of King Charles II. are illegal?

‡ *Waltrond v. Pollard*, 10 Eliz., Dyer's Reports, 272, sqq.

§ *Archbishop of Dublin v. Bruerton*, 11 Eliz., Dyer's Rep. 282, sqq.

|| *Case of the Dean and Chapter of Norwich*, Coke's Rep., Part III., fol. 73.

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Corporations are created that they shall do so, that is, govern the town, and so cannot surrender. If they do, they are destroyers of the trust and are *felo de se*, and for these reasons a corporation has no power to surrender; it breaks all the frame and being of (*sic*), and all the others in the town have an interest in it. As for the authorities in law, it is agreed there is no great authority for a surrender. The two cases in Dyer, which have been mentioned, have been fully answered in other books. Mar[ch's Reports], Dyer 273, Brooke's Abr. "Corporation," 78; Brooke's Ent[ries], 75. Den. Nor[vicensis], 76. *Hayward v. Fulcher* [in] Palmer and Jones,* [shows] that a surrender of all their poss[essions] is not to be done. The surrender of lands does not dissolve the Corporation. Two cases have been cited. As to the Deanery of Wells, there is no authority in that case, because there is a Statute made that enacts that the Corporation shall be dissolved. Coke, 3rd Rep. 75, states that that grant and surrender was not thought to be good until there was an Act of Parliament. This shows the insufficiency of a surrender. This was Lord Coke's opinion. In the case given in Dyer, 282, there was an Archbishop of Dublin, and two Chapters, St. Patrick and Christ Church, upon leases. In Jones, 168, it is said this was but a private opinion, and it might be perhaps that before this all the parties were dead. These cases are nothing. The cases against surrender are very strong. In the case of the Dean and Chapter of Norwich, 40 Eliz., it came in question and in both of these it was declared illegal. Palmer, Rep. 491, there is a new patent granted which recites the other was done, that a new one might be granted or constituted. Here is intent sufficient and words. Yet all the Judges of 2 Car., Coke and Littleton, all agree there is no surrender. Why say they: The words are not sufficient? This is so strong that no man cannot go by it. The Judges that judged that case were of opinion that a Corporation cannot be surrendered. Palmer, 501. He reads the words. The King can create, yet he cannot destroy it. "Jones is of another opinion," say they. Yet, he says only, they may resign. Palmer, 503, says they cannot surrender. Another argument usual: which is convenient? Laws are made for the public good, and I hope will [be]. What is made otherwise is inconvenient. What will be the mischiefs if they have not this power? They may be poor. They sit still and it will be at an end. What then will the other side be? First I would [ask as to] the Ch[urch], what condition would that be in? [There are] laws that the Ch[urch] shall not alien[ate]. If a Ch[urch]-man may surrender his Corporation, what is to become of the lands? A Ch[urch]-man is a Corporation. What end are laws for? This would evade all provisions we can think of. A Corporation runs into debt. Go and surrender. Then it is *in nubibus* and [the creditors] lose it. How many towns have elections by freemen? And then a new charter is a delicate thing, and then where are we? *L. C. Baron*: The two Chief Justices seem to differ in opinion. I may differ from them. In some cases they may surrender, and in other cases they cannot. There are several cases in the books. The religious houses; if they forsake their house, there is an end. In case all die there is a dissolving of it. In Sir J. Davis' Reports it is held that the surrender of lands is not a dissolution.† It seems to me rational that where for private ends a Corporation is granted, they may not surrender. In the Bill there are great recitals. I shall hold in this

* 21 Jac. Palmer's Rep. 491; Jones' Rep. 168.

† See *Davis' Rep.*, pp. 3, 4 (The Case of Proxies).

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case they cannot surrender. Though it is granted to a small town, it is not theirs, it is the whole Kingdom's. [The interest of] all the people of England is concerned, and that, it is clear, cannot be surrendered. A resolution of your Lordships in the case of Viscount Purbeck declared that honours could not be surrendered, though by fine. If this might be, how easy would it be to alter the constitution of the Government. They cannot surrender. *Dolben, J.*: I remember the case of the City was argued when I was a judge to my smart. Upon the best judgment I could make, I could not satisfy myself that a Corporation could surrender nor forfeit, and am of the same mind now. I know no direct authority in our books that they can surrender. I do know direct authority in our books that they cannot. They cannot do it under their common seal, and that is sufficient for your Lordships' word "illegal." As to the inconveniences—They may be poor; why, if they will sit still, there is an end. Hugo Grotius discourses of (*sic*). The inconveniences on the other side are very great. Two or three Acts [relating] to the City, whereby they are trust[ees], are made void. I cannot imagine how it should be done, so my opinion is, that a surrender of a Corporation is illegal and void. *Gregory, B.*: I confess the authorities in our books are very thin. That it is in the power of a Corporation to make itself cease, is allowed. Now, the breaking of their trust is not acting,—I do not see but they may make a surrender. The Judges differ. The Judges that say they cannot surrender, yet imply in some cases they may surrender. I am not very clear in this, but I am of opinion that in some cases they may surrender. *Lechmere, B.*: It has been observed what a Corporation is. It is diffused into every member. It is even to the scavenger and beadle as the Mayor etc. Then, if every member should concur towards this, whether this would destroy it? It would be destroyed, it may be said, "if every individual," etc. It is a hard matter to say, whether ever there were such a case. I think there never was such a one; and it could not be surrendered in parts. It must be extinct totally or remain totally. Time past did not trade in surrenders. There is no direct authority for surrender, but several against it. To my understanding, all corporations that send members to Parliament cannot surrender. They cannot waive it [and] destroy it. Out at this leak may run all the Government of England. As a Peer cannot surrender, so a Corporation cannot surrender. *Rokeyby, J.*: I conceive that a Corporation cannot dissolve itself. It is illegal for them to break such a trust. One may say [it] is ill done, but I may say it cannot be done. It is an innate principle of every being, [it is said,] to dissolve itself. I apprehend there can be no ways or means by which such a thing can be done, and all that is thus done is a self-contradicting act. No act that a private capacity does, can effect the Corporation to pass it. The authorities of the Dean of Norwich and Hayward v. Fulcher fully contradict all the other cases. In one there is but a marginal note. There never was any authority or precedent in the case, and such a surrender cannot be legal. *Eyre, J.*: I must confess we are all in the dark. There is no case in the books one way or the other. We being thus in the dark, all that can be given by us is a conjectural opinion. A lay Corporation may surrender itself. It is framed by the policy of law. To think there can be such a franchise granted to anybody that cannot be determined by the consent of people interested will be a singular case and has no fellow in the law. As for denizens, an alien cannot surrender, I allow. As to saying that hereby they will be *felo de se*, why should this be? This does not similarly stand *quater pedibus*; therefore it cannot be similarly to a natural body. All books

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agreed that each member may surrender to the body, and why, if all agree, cannot they all surrender? The King grants a leet to the lord of a manor all have an interest in, yet the lord may surrender. So, a fair is public, yet there may be a surrender; if they do not, are not those members then as much *felo de se* as in surrendering? [As to the] many inconveniences, every Corporation is a borough, and then if the Corporation be surrendered it results into the borough. At all times there was a variety of opinions in this case. I submit all to your Lordships. *Ventris, J.*: I am of opinion that a surrender of a Corporation is not valid in law. First, from the nature of the thing itself. It cannot be transferred by a surrender; it must be done by the seal or otherwise, to which there may be many exceptions. A Corporation is a body that bears a great similarity to that of a person, and as he may part with anything, yet he cannot part with his natural powers. A man cannot surrender his personalty. [In margin: Edw. III. Keil[wey's] Reports.] Court of Ironyll (*sic*): all made their claims. All kinds of Corporations make a claim of their privileges, but not of their Corporations. If all those persons that are invested should surrender, that is liable to be, (*sic*), this would not at all affect the Corporation. As to the authorities, the latter authority favours this opinion that they cannot surrender. 2 Croke, 518. As to the inconveniences, they may be exorbitant, if they cannot be surrendered. If a Corporation does not do anything that is seditious, it is dangerous if they cannot be surrendered. *Turton, B.*: A Corporation, in my opinion, cannot be surrendered, from the nature of a Corporation. It cannot do anything for its destruction. This is an inheritance different from others. An alien is but a capacity; he cannot surrender. I cannot find any one instance of it. I think there are as full and apt words in the Dean of Norwich's case as can be contrived, and yet it was judged it was not a surrender. If they have a power of surrender, there will be great inconveniences. All their lands then are gone; all public charities are gone. If there be not a *modus* for their surrendering, there cannot be such a power. I am of opinion they cannot surrender.—The House then adjourned the debate till the morrow. (MS. Min., 22 Jan. L. J., XIV., 422.—23 Jan. House in Committee; E. Mulgrave in the Chair. The first enacting Clause of the Bill read. After debate, *Agreed*, That the charters of the Plantations shall be considered distinctly. *Question* put, Whether the words ("declared and") and ("were and are illegal and void, and") shall stand in the Bill? Resolved in the Negative. Contents, 37; Not-Contents, 37. Tellers, E. Stamford and E. Nottingham. House resumed. E. Mulgrave reported the omission of the words. (L. J., XIV., 423.) *Question*, Whether to agree with the Committee in leaving out those words? Resolved in the Affirmative.* Contents, 51 (including 13 Proxies); Not-Contents, 43 (including 4 Proxies). (MS. Min., 23 Jan.) After this the Bill dropped with the Prorogation on the 27th.]

Annexed:—

(a.) Petition of John Wayte, William Robins, Edmund Sansome, Edward Browne, Robert Younge, Richard Knee, Thomas Arnold, Richard Collins and John Rogers, of the borough of Malmesbury, in the County of Wilts. Petitioners for valuable considerations paid in money, and in pursuance of a Decree in Chancery, purchased in 1685 of the Corporation of Malmesbury 13 closes, belonging to the borough, for the term of 21 years at a rent of

* For Protest see L. J., XIV., 424.

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30*l.* per annum ; and have been at great charges in improving the said closes by burning and baking some of them. Petitioners are informed that the Bill for restoring corporations provides that all leases made since the surrender of the respective charters shall be good, unless the bodies politic and corporate shall satisfy such monies as were paid for fines and laid out in improvement. A Proviso was offered in the Commons on report, and ordered to be engrossed, for destroying of leases made by the borough of Malmesbury * (only), which will be a great loss to Petitioners, who did not hear of it till it had passed the Commons. Pray to be heard against the Proviso. [The only date on this Petition is 1688-9, and there is no entry in the MS. Min. of its having been received or read.]

209. Jan. 13. Coffee, etc. Duties (Customs House Collection) Act.—Petition of Geoffrey Nightingale, Francis Gosfright, and other merchants of London. Petitioners are informed that a Bill has been sent up from the Commons for laying an additional duty on all coffee and tea, &c. imported since 25 December last. Pray to be heard against the Bill, which will prejudice the revenue and the trade of the nation in general. *Signed* by Nightingale, Gosfright, and Samuel Proctor. L. J., XIV., 410. [The Bill received the Royal Assent on 16 Jan., *ib.* 416. 1 W. & M. Sess. 2, c. 6. See also No. 121.]

210. Jan. 14. Waynwright v. Wiseman.—Petition of James Waynwright. Almost *verbatim* the same as his Petition of 26 Nov. 1689 (No. 177). Prays that Respondent may be ordered to show cause why the order of Sessions should not be set aside. L. J., XIV., 412. [This Petition was heard and dismissed on 15 May, after hearing *Mr. Darnell*, as Counsel for Petitioner. MS. Min., L. J., XIV., 499.]

Annexed :—

(a.) 21 Jan. 1689. Answer of Ann Wiseman, Administratrix of of her father, William Wiseman, Gent. Respondent's father died leaving his son William and Respondent and two other daughters utterly unprovided for, though he lived a gentleman of good credit at St. Albans, but his estate was wasted by loyalty and misfortunes. After his death, his children found the bond in question, and also a writing whereby the son of Jolley, a surety of Wainwright, covenanted to pay two-thirds of the money in full excuse of his father. Respondents failed to find Appellant till 1685, when they found that he lived in plenty in London, while pretending he had been a prisoner in the King's Bench above 20 years, and were informed he had fined for Alderman and broke for many thousand pounds, but had compounded most of his debts. Respondent having sued him on the bond, he pleaded payment but failed to prove it, and he is now prisoner on execution. He summoned Respondent to four several Sessions that he might be discharged on his oath that he is not worth 10*l.* but the Justices refused him relief because he could not show he was a prisoner for the debt at the times mentioned in the two Statutes, viz: 14 April 1671 and 29 May 1678, and because the last Statute provides that no person shall be discharged who stands charged in execution for more than 500*l.* Respondent never knew, and does not believe that Appellant was ever in

* See Appeal of *Town of Malmesbury v. The King*, No. 201.

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execution for the same debt before; and the discharge, if made, against her brother was void, he not being administrator. Appellant's former petition to the House was to be relieved against the same judgment and execution and Order of Sessions, which petition was dismissed on 31 Dec. 1689. (L. J., XIV., 400.) Prays that this Petition may be dismissed with costs as vexatious. *Endorsed* as brought in this day.

(b.) 27. Jan. 1689-90. Petition of Appellant for a day for hearing. [Read this day. MS. Min. Not in L. J.]

(c.) 27 Jan. 1689-90. Order of date on preceding. MS. Min. Not in L. J.

(d.) 31 March 1690. Petition of Appellant. Petitioner is kept close prisoner in the King's Bench by Mr. William Lenthall, the present Marshal, as he was by his predecessor, Mr. Glover, with a view to preventing him from prosecuting his Appeal. Prays their Lordships to continue their order of 11 Dec., assigning John Darnall, Esq., as Counsel to Petitioner, and that Petitioner may proceed *in formâ pauperis* and a day be appointed for hearing. L. J., XIV., 444.

211. Jan. 15. L. Culpeper's Bill.—Draft of an Act for making null and void all conveyances and wills made or pretended to be made by Thomas, Lord Culpeper, deceased, for the benefit of Susanna Willis, otherwise Welden, otherwise Laycock, and her two natural daughters. Whereas Thomas, Lord Culpeper, being seized in fee of divers manors, etc., in the counties of Southampton, Kent, Sussex, Warwick and Lincoln, and being also possessed of divers messuages etc. during some certain terms of years, unhappily fell into the acquaintance and conversation of Susanna Willis, otherwise Welden, otherwise Laycock, who by her artifices so far seduced him that he, for many years before his death, lived apart from his Lady, who never gave him the least occasion of offence, and with whom he had a very great fortune, with which he purchased a very considerable estate of inheritance in fee simple, and the said Lord Culpeper was to that degree ensnared by the said Susanna, that he spent most of the revenue of his estate upon her, which expense amounted to at least 60,000*l.*, and by that means had but little left to allow his said Lady, and his only child, Mrs. Katherine Culpeper for their support and maintenance; and although he was sensible of his miscarriages and often declared to his chief confidants that he would not do anything in reference to his estate to the prejudice of his wife and child, yet the said Susanna by fraud, circumvention and evil practices prevailed on him to make several settlements, which she conceals or has in her custody, for the benefit of her and her two children, which she caused him to own as his, and at length when Lord Culpeper approached his death and had not the exercise of his reason, caused him to declare a writing, prepared by her and her accomplices, to be his will, whereby a great part of his estate is by pretence disposed of to her and her children, and no provision is made for the payment of his debts, which are great, and contracted for the buying of rich household stuff, plate, jewels, etc. for the said Susanna, which she possesses to a great value, pretending them to be the said Lord Culpeper's gift. Therefore to remedy her frauds and wicked practices, and to relieve Lady Culpeper and her daughter, and for deterring people from committing the like frauds and deceits for the future, the Bill enacts that all conveyances, wills, etc. made by the said Lord Culpeper or by his direction, for the benefit of the said Susanna

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and her reputed children, or persons in trust for them shall be null and void; saving to their Majesties etc. [Read 1^a this day. After debate, Question, whether this Bill shall be rejected? Question put, whether this question shall be now put? Resolved in the Affirmative. Main Question put, whether this Bill shall be rejected? Resolved in the Affirmative. Contents, 36 (including 3 Proxies); Not-contents, 35 (including 9 Proxies). Tellers E. Feversham and E. Berkeley. MS. Min., 15 Jan. L. J., XIV., 414.]

212. Jan. 16. Hereford, Dean and Chapter of *v.* Hodges.—Petition and Appeal of the Dean and Chapter of the Cathedral Church of Hereford, and James Gregory, Esq. In 2 Jac. II. the Respondent brought a Bill in Exchequer to set aside a lease granted by the Dean and Chapter of Hereford to the other Appellant James Gregory, of the impropriate tithes of Woollhope, in the county of Hereford, and claiming a lease thereof instead, at the accustomed rent, on the ground that they were granted in 1660 to Mr. Buckley, the former vicar there, as an augmentation to his vicarage, and that the augmentation was made perpetual by the Act of 29 Car. II. for confirming augmentations. Appellants insisted that upon the lease to Mr. Buckley nothing had been reserved by way of increase of rent, either to the lessor or to the vicar for an augmentation, and that therefore the same was not confirmed by the Act, which related only to such augmentations as were made by reserving of rent over and above the ancient rent; and further, that the rent corn reserved on the said lease, being 276 bushels of wheat and 513 bushels of oats according to the Winchester or market measure, was the full value the tithes and a rack rent, and that Mr. Buckley lost by it, and surrendered his lease to the Dean and Chapter, and Mr. Spratt, the succeeding vicar, refused to accept a lease at the same rent, whereupon, at the desire of the Dean and Chapter, the Appellant Gregory's father took a lease, which had since been renewed to his son. The Deputy Remembrancer being ordered by the Court on the first hearing on 8 Nov. 1688, to compute the value of the tithes and make Gregory allowance for the rent corn reserved on his lease and for taxes, reported that the tithes were worth 80*l.* a year and that the rent corn amounted to 78*l.* 2*s.* 10*d.* a year besides taxes; but on a rehearing on 7 Nov. 1689, the Court decreed Gregory's lease to be void, and ordered the Dean and Chapter to make a lease to Respondent, according to Buckley's lease, and awarded an injunction to the Sheriff to put Respondent into possession, Gregory to account for what he had received from the time when Respondent became vicar to the Michaelmas last past, and to be allowed only what he should swear he had actually paid to the prebendary for taxes. Appeal against this decree, and pray that Respondent may be ordered to answer and that proceedings may be stayed. *Signed* by James Gregory and by Chas. Spencer (on behalf of the Dean and Chapter; *Countersigned* Wi. Williams and Edward Ward. [Read this day on report from the Committee for Petitions. (L. J., XIV., 416. Pet. Book, 15 Jan.) The Appeal was heard on 17 April. *Serjeant Hutchins* (for Appellants): Shows the lease; the rent was to be paid in corn, Mr. William Gregory having lands in the fields where this is. Hodges pretends this lease would be a beneficial lease to him. It was made in 29 Car. II. The Dean and Chapter have done ill to grant, and Mr. Gregory to accept. 8 Nov. 1688, Mr. Gregory to be allowed what he had actually paid. The decree, we insist, is erroneous; there was no augmentation. *Mr. Ward* (for Appellants): The question is whether the Act of Parliament perpetu-

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ates this as an augmentation. The Chapter cannot reserve a less rent. *Solicitor-General* (for Respondent): This is within the Statute fully and is an augmentation, and any new lease is void. *Mr. Dobyns* (for the Vicar): Says it is clearly within the Statute and prays for costs. *Serjeant Hutchins* having replied, the *Speaker* reported the whole matter lying upon the Statute. The opinion of the Judges desired to be asked. *L. C. Justice* asks do you take the fact is above 8*l.* per annum, then how can this be an augmentation. Taking the fact that the rent is as much as the value, it is no augmentation. [As to] the freehold, if the Statute be taken to extend, then it is in the vicar and his successors. *Dolben, J.*: I take it it is no augmentation. If it should be, it takes away the very intention of the Act. If there be a good agreement, then the vicar is in the right. I think this decree is erroneous. *Lechmere, B.*: I think there never came a fairer thing before us. It is the first time I ever heard that the Dean and Chapter (*sic*); we thought it our duty to do as we did. *Rokeyby, J.*: It was intended to be a surplusage over and above. I conceive it is not an augmentation within the Statute. The question whether the decree shall be affirmed was then resolved in the negative. MS. Min., 17 April. L. J., XIV., 467.]

Annexed:—

- (a.) 25 March 1690. Petition of Appellants. Respondent, who had been ordered to answer on 30 January last, did not do so, Parliament having been prorogued before that day. Pray that he may be again ordered to answer, and that all proceedings may be stayed. Signed by Gregory for himself and also for the Dean and Chapter. L. J., XIV., 437.
- (b.) 7 April 1690. Answer of Richard Hodges, Clerk, Vicar of Woolhope in the county of Hereford. The ancient endowment of the vicarage being so mean as not to afford a competent subsistence to the vicar, the Dean and Chapter, who had the advowson and right of presentation, long since agreed that the vicar should have the benefit of the lease of the tithes, which agreement was duly confirmed. But of late there being some interruption, the late King Charles II. by his Letters to the Lords Bishops Deans and Chapters and particularly to the Dean and Chapter of Hereford, recommended the case of poor vicarages to their care with a view of improving their condition, in pursuance of which letters, on the petition of Anthony Buckley, the then Vicar, the Dean and Chapter by indenture of 23 Oct. 1660, in consideration of an augmentation for the better livelihood of Buckley and his successors in the vicarage, and under the rents and covenants therein specified, demised the tithes to Buckley for 21 years. The said augmentation was afterwards confirmed by Act of Parliament, and Buckley quietly enjoyed possession till he died. After his death, the Appellant Gregory's father, being Buckley's executor and having got his writings and induced John Sprat, the succeeding vicar, not to oppose him, obtained a lease from the Dean and Chapter, which by contrivance between father and son to defeat the said augmentation, was renewed in the name of the Appellant James Gregory. This lease the Court declared to be void and ordered the Dean and Chapter to make a new one to Respondent, and account for the profits he had received, and in regard the rents were reserved in corn and Gregory had agreed with those that were to receive

the corn to accept of money yearly for the same and paid money in lieu of corn in kind, the Court declared he should be allowed only what he yearly paid in lieu of corn, leaving the amount to his oath. Prays that this decree may be confirmed. *Endorsed* as brought in this day.

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213. Jan. 16. *Gostwick v. Ashbolt*.—Petition of Sir William Gostwicke. A Bill in Chancery was brought by Respondent against Petitioner, to be relieved against the defeazance of a judgment of 1,400*l.*, given to Petitioner by Respondent, wherein, as complained, was inserted a debt of 329*l.* due from the Respondent to a Mr. Bell. Petitioner not being prepared at the hearing to make out how the money due to Bell became Respondent's debt, Sir John Trevor, the Master of the Rolls, on 11 Feb. 1687 decreed the defeazance to be set aside, and ordered a general account. Sir John Franklyn, the Master, after hearing Counsel on both sides, reported Bell's debt to be the Respondent's, but Respondent having taken exception to the Report, his exceptions were allowed, and the defeazance was not admitted to be read or taken notice of. On a rehearing as to Bell's debt, the decree setting aside the defeazance was confirmed by the Lords Commissioners of the Great Seal, although no evidence appeared of any fraud or surprise, but it was plainly made out that Respondent received the money by Petitioner's order to pay Bell, but never paid him. Prays that Respondent may be ordered to answer, and that proceedings may be stayed. *Signed* by Appellant; *Countersigned* George Hutchins and Ambrose Phillipps. [Read this day on report from the Committee for Petitions (L. J., XIV., 416. Pet. Book, 15 Jan.) The Appeal never came to a hearing.]

Annexed:—

(a.) 23 Jan. Answer of John Ashbolt. Respondent was for many years Appellant's bailiff and receiver, and lent and supplied him with various sums, and became his surety to several persons, including Mr. Bell, since deceased, for 500*l.* Appellant, being also bound as surety for Respondent for payment of sums amounting to 320*l.* prevailed with Respondent in 1685 to give him a judgment of 1,400*l.*, and a defeazance thereof being prepared, there was inserted therein by fraud the sum of 329*l.*, remaining unpaid of Bell's debt, as if it had been the debt of Respondent, whereas in truth it was Appellant's. Respondent never had any allowance made to him, or any reason or consideration why he should take on himself the debt. Appellant having taken out execution and seized Respondent's goods, Respondent brought his bill in Chancery for relief. Appellant never pretended before his present Appeal that Respondent had received money wherewith to pay Bell's debt, but on the contrary in his cross-bill charged that he became bound as surety for Respondent for the debt, as if the same had been Respondent's. As to the report of the Master, even if it were as is alleged, it could not control the judgment of the Court. Prays that the Appeal may be dismissed with costs. *Endorsed* as brought in this day.

214. Jan. 16. *Dashwood v. Champante*.—Petition of Robert Dashwood, Knt. and Bart., Sir Samuel Dashwood, Knt., John Pery and Edward Noell, Esq., surviving executors of the last will and testament of George Dashwood, Esq., in trust for minors, the younger children of the said Mr. Dashwood. Sets forth that Richard, now E. Ranelagh, Sir

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Alexander Bence, Sir James Hayes, Robert Huntington, Richard Kingdon, John Bence, Joseph Deane, and John Stepney, Esqrs., and the said testator George Dashwood undertook, by covenant with King Charles II., dated 4 August 1671, to manage the revenue in Ireland from 25 Dec. 1670 to 26 Dec. 1675, and by Commission under the Great Seal, dated 23 Sept. 1671, the said Undertakers or their representatives, or a quorum of five, were appointed to manage the undertaking accordingly, and by articles between the Undertakers Lord Ranelagh was to have and bear four-twelfth shares and each of the others one-twelfth share of the profits, the representatives having no interest but being paid by salary. Sir John Champante was appointed by them their Treasurer on 8 Nov. 1671 and his accounts, up to 25 Dec. 1673, drawn into two accounts, were duly examined, signed and allowed by a quorum of the Undertakers. On 8 May 1674 the testator George Dashwood assigned his share to his fellow-Undertaker, Sir James Hayes, and retired from the undertaking. Sir John Champante, who had notice of this assignment, brought in 1677 a Bill in the Court of Exchequer in Ireland against the Undertakers, including Dashwood, claiming 36,454*l.* 8*s.* 8*d.* on two pretended accounts stated by one Edward Roberts by colour of an authority given him by Sir James Hayes and Sir John Stepney, without the privity or consent of the other Undertakers,—one from 25 Dec. 1673 to 25 Dec. 1674, and the other from Dec. 1674 to 24 June 1677, which accounts he afterwards falsified by cutting out certain charges and pasting on a new leaf containing others in their stead. Dashwood died in 1682 before this suit came to a hearing, and it was never revived against Petitioners, his Executors. On 11 June 1684 Sir John Champante obtained a decree against E. Ranelagh and others for 24,159*l.* 8*s.* 8½*d.* and 78*l.* costs. He afterwards brought a Bill in the Exchequer in England against E. Ranelagh and others, including Petitioners, as Dashwood's Executors, for the sum so decreed him in Ireland, together with interest and sundry other sums not included in Robert's accounts, amounting to 34,567*l.* 11*s.* 7*d.*, and therein charged that there was due to him on 6 May, 1685 the sum of 58,756*l.* 0*s.* 4*d.* and upwards. Appellants in their answer insisted that the testator had only a twelfth share and had assigned his interest in the undertaking, and that Champante soon after had notice thereof. Champante took out a Commission to examine witnesses in Ireland, but Appellants being moreover mere executors of Dashwood and strangers to the original transactions, were unable to prove the assignment and notice, owing to the illness of their principal witness, and the Court refused an application for a new Commission. Appellants then, in 1688 brought a Cross-Bill in Exchequer against Champante, charging him to answer if he had not had notice of the assignment, to which Champante put in an evasive plea, and the Court refused to give judgment on this point until they had heard the cause upon Champante's Bill. The cause was heard in 1689, when proof was given of the assignment, but the Court refused to hear witnesses as to notice, and on 20 June 1689 referred the accounts to the Auditors of the Imprest, with power to examine witnesses on both sides, and ordered such of the then defendants as would be exempted from accounting to bring in their cases for the Barons to consider of. Petitioners accordingly delivered in their case, insisting that they ought not to be accountable to Champante further than from 25 Dec. 1673 to 8 May 1674. Their case was heard on 6 Dec. 1689, when the Court again refused to hear witnesses as to notice, and ordered Petitioners to be subject to the whole account. Appeal against the said Orders and Decree, and pray

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that Respondents may be ordered to answer. *Signed* by Appellants; *Countersigned* R. Sawyer, H. Finch and Sam. Dodd. L. J., XIV., 416. [The cause first coming on for hearing on 24 April, *Mr. Ward* (for Respondent) objected to the Appeal as being from an interlocutory order. *Mr. Hutchins* (for Respondent): My client has been many years in suit. One of 22 defendants has brought his appeal, and so there will be 22 appeals. One may bring an appeal, but it is as if it were for a rehearing. But then he must bring all the defendants. *Sir Charles Porter* heard to this point and states the proceedings in the Exchequer. *Mr. Finch* (for Appellant): Urges why they ought to go on for Sir Robert Dashwood. He stands simply in this case. If a man be decreed to account and he thinks he ought not, he has cause to complain. Speaks as to why the other parties are not made parties to this appeal. *Mr. Ward*: They examined to the point of notice. They did produce Mr. John Hayes. *Sir Charles Porter*: We must contradict what they say. We had brought a Bill for examining witnesses. Sir James Hayes is no party. *Mr. Ward* produces four orders, wherein they had time for examining. Counsel withdraw. The Speaker reports, and after debate, the House ordered the Barons of the Exchequer to examine witnesses, and that the accounts be understood by the Court to be open accounts between both parties. (L. J., XIV., 473. MS. Min., 24 April.)—On the 25th upon reading the order, a debate arose upon opening the account. *Moved* to hear the Barons of the Exchequer as to the matter of fact. *Moved* to hear Counsel as to opening of the account. The House then ordered to hear Counsel on the 28th as to the Order of the 24th. (L. J., XIV., 474. MS. Min., 25 April.)—On the 28th Counsel were again heard. *Serjeant Hutchins* (for Respondent): Shows why the Court of Exchequer should not take the account to be an open account. There were to be representatives named. *Mr. Ward* (for Respondent): There were two accounts made up. Whether they shall be open or not is the business. If open we must produce vouchers for every particular. A writing read, dated 29 August 1677 under Sir J. Haye's hand. Lady Rane[agh's] letter of May 1677. The assignment of May 1674. L. Ranelagh is offered as evidence against Mr. Dashwood. Several depositions read. *Sir Charles Porter* (for Appellant): Two accounts were made up by Mr. Roberts, and if these were as they, there would be no dispute. Sir J. Hayes' hand we have proved is forged, that he signed the order to Roberts to state the account. We have examined Mr. Roberts and he says he thought it an authority for an account. *Mr. Finch* (for Appellant): It is impossible it should be a stated account as to Mr. Dashwood. It is impossible to know what the balance was in 1674. In the book of the stated account there are absolutely five or six leaves cut out. The House then ordered the Speaker to report the next day. (L. J., XIV., 477. MS. Min., 28 April.)—On the 29th the Speaker reported, and after debate upon opening the accounts, the House ordered that the Order of 24 April should stand confirmed. (L. J., XIV., 478. MS. Min., 29 April.) For later Appeal see under date 11 Dec. 1690.]

Annexed:—

- (a.) 22 March 1689-90. Petition of Sir Robert Dashwood, Knt. and Bart.; Sir Samuel Dashwood, Knt.; John Pery, and Edward Noell, Esq., surviving Executors of the last Will and Testament of George Dashwood, Esq., deceased, in trust for minors, the younger children of the said Mr. Dashwood. Petitioners in the last Session presented an Appeal from a decree

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and several orders of the Court of Exchequer, since which time Parliament has been prorogued. Prays that Sir John Champante may be ordered to answer within a time limited. L. J., XIV., 435.

- (b.) 26 March 1690. Answer of Sir John Champante, Knt. Respondent was appointed by the Undertakers their Deputy Receiver-General to receive the revenue and pay all sums due to any persons on the Civil and Military list in Ireland up to 26 Dec. 1675. The Undertakers, finding afterwards that the revenue did not come in fast enough nor was sufficient to answer the payments, desired Respondent to advance what he could to the undertaking, with an allowance of 10 p. c. Irish interest, and procure what he could on the credit of the undertaking, and also agreed with several persons residing in London, then unknown to Respondent, for the advance and loan of several sums of money due to the said persons in Ireland, for which money Respondent, on their promise of indemnification, became bound, and for which interest as above and commission-money and gratuity were to be allowed. Respondent gave security of 10,000*l.* for performance of his trust, and delivered weekly and quarterly statements of account, and out of the latter made up several entire accounts, the first being from 13 Nov. 1671 to 25 Dec. 1672, and the second from 25 Dec. 1672 to 25 Dec. 1673, when he had discharge from the Undertakers thereon, leaving a balance due to him, which was drawn into the succeeding accounts. Roberts, the testator's representative and resident in Ireland, and who had by the direction of the Undertakers made up the two former accounts, was similarly authorized to settle Respondent's further accounts, which he accordingly did in two accounts, viz., one from 25 Dec. 1673 to 25 Dec. 1674, and the other from 25 Dec. 1674 to 24 June 1677, showing altogether 24,159*l.* 8*s.* 8½*d.* for money lent, borrowed and secured, besides what was due to Respondent for interest, commission money, and gratuities, and thereupon Respondent delivered up all his warrants, orders, debentures and vouchers. The Undertakers refusing to pay, Respondent brought his Bill in Ireland, but Dashwood and some others of them refused to answer, and in 1683 (Dashwood having meanwhile died), the Bill was taken *pro confesso* against the other Undertakers who had not answered, viz., Sir James Hayes, Bence, and Huntington, and on 4 July 1683, Respondent obtained a decree for the amount claimed with costs. This decree was made absolute on a second hearing against all the Undertakers except Lord Ranelagh, the only one who had answered, and he having brought a Cross-Bill in Ireland against Respondent, both causes were heard in June 1684, when the Court ordered that Respondent should recover the amount claimed and be at liberty to recover his interest, commission-money, and gratuities. Respondent having no fruit of his decree in consequence of the Undertakers having removed with their effects into England, brought his Bill in 1685 in the Exchequer at Westminster. After long delays brought about by Appellants, the Court decreed in favour of Respondent's claim, and the present Appeal is simply for further vexation and delay. Respondent had no notice of the pretended assigment and has always been ready to be examined on interrogatories, but Appellants have not thought

fit to prefer any. Appellants' pretence of proving the assignment and notice is simply to gain time and weary out Respondent. Prays that the Appeal may be dismissed with costs. *Endorsed* as brought in this day.

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- (b.) 2 April 1690. Petition of Respondent for a week's further time for hearing, his Counsel being on circuit, and Petitioner not having time to instruct others, who are unacquainted with his cause. *Endorsed* as read this day; nothing done on it. MS. Min., 2 April. No entry in L. J.

215. Jan. 16. Pope v. Decasseres.—Petition of Charles Pope. Petitioner is assignee under a Commission of Bankruptcy awarded against Walter Masters, of London, merchant, who, absconding in 1685, privately deposited with one Thomas Morgan money and effects to the value of 700*l.*, of which 204*l.* was invested in two Bills of Exchange, drawn by Gregory Pym, of London, Merchant, on Clement Pym, Merchant in Amsterdam, payable in two months, to John Woder, who endorsed and made them payable to Joseph Fyazoon, who again made them payable to Francisco Decasseres, a Jew. Decasseres afterwards endorsed his name on the two Bills without writing anything over his name (which is called an indorsement open) and delivered them to Masters, thereby assigning to him the property of the Bills. Masters delivered the Bills to Morgan to receive the moneys due thereon, and Morgan received the value thereof from Woder, which money ought to be reckoned part of the bankrupt's estate, to which Petitioner as assignee, is entitled. Decasseres brought two actions at law against Morgan in trover for the bills, claiming the property of them on the ground that his indorsements were open and blank and that he had never received any value or consideration for them from Masters, but he was non-suited in the first action and had a verdict against him in the second one, Morgan proving that by the custom of Merchants the property of the bills was quite altered and the bills well assigned, and that there was value received by Decasseres. The latter then brought a bill in Chancery against Petitioner as well as Morgan, and the Commissioners, suggesting that Masters paid no value for the bills and that the same were not sufficiently assigned and that Masters was only a trustee of them for him, Decasseres, and claiming the value of them from Morgan. This bill was dismissed by the Master of the Rolls in 1687, whose decree was confirmed by the L. Chancellor Jeffreys. The Lords Commissioners of the Great Seal, on rehearing the cause, were of opinion that Masters was only trustee for Decasseres, and decreed that the money received on the bills should be paid to Decasseres accordingly. Appeals from this decree, and prays that a day may be appointed for hearing. *Signed* by Appellant; *Countersigned* William Whitelocke and William Dobyns, who certify that they conceive this cause fit for their Lordships' relief. [Read this day on report from the Committee for Petitions. (L. J., XIV., 416. Pet. Book, 15 Jan.) The Cause was heard on 8 Nov. *Sir Ambrose Phillipps* (for Appellant): The Bill of Exchange was assigned. It is a good assignment by the custom. He was non-suited upon evidence. *Mr. Ward* (for Appellant): The Bill is dated 10 Nov. 1689. Masters became a bankrupt. *Sir Charles Porter* (for Respondent): I shall show how it came to go against my client at law. It was by his Attorney's fault. The trust was for us; there was never any value paid by Masters. As the case is, we may very well aver the non-payment. I acknowledge the dismissal in Chancery; they were sudden. The question is whether the Chancery

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had good ground to make this decree. *Serjeant Killingworth* (for Respondent): The trial was by consent. The confession of Morgan is plain it was none of his. In Chancery in conscience the money is ours. *Sir Ambrose Phillipps* replied, and the Speaker having reported, the House affirmed the Decree. (MS. Min., 8 Nov. L. J., XIV., 545.)]

Annexed:—

(a.) 24 Jan. 1689-90. Answer of Francisco Decasseres. Respondent about December 1685, having a Bill of Exchange drawn on one Pym in Holland, desired Walter Masters, an acquaintance, who had a correspondent in Holland, to send the bill to that correspondent to get acceptance and payment for Respondent's use, and endorsed the bill blank with his name and delivered it to Masters, who delivered it to Morgan to send into Holland. Morgan did so, but the bill coming back protested for want of payment, Morgan who according to the custom of Merchants had the legal interest (though in trust for Respondent) brought his action against one Woder, to whom Respondent had paid the value and recovered the money. Shortly after the Bill was delivered to Morgan, Masters absconded, and Appellant, a creditor, being made assignee of his estate in bankruptcy, claimed the 204*l.* received by Morgan on the Bill, supposing it to be part of Master's estate. Morgan owned that he had paid nothing for the Bill, but alleged that he could not safely pay the money to Respondent, till the latter should recover it by law. Thereupon Respondent by consent brought his action by trover against Morgan, but the Court, contrary to the advice given to Respondent by his Counsel, found that the legal interest in the Bill was not in Respondent but in Morgan, and that Respondent's title to the same was in equity alone and not recoverable by the strict rules of law. Respondent then sued Morgan and Pope in Chancery, and Morgan confessed in his answer that the money did not belong to him, but Respondent's Bill was dismissed, without any examination of the merits or hearing of proofs. The Lords Commissioners, after a full hearing, were satisfied that the money belonged neither to Masters nor Morgan but to Respondent, and decreed accordingly. Prays that the Appeal may be dismissed with costs. *Signed* by Respondent; *Countersigned* Charles Porter.

(b.) 26 March 1690. Petition of Appellant, that he may proceed now on his Appeal, and that all proceedings on the decree may be stayed. L. J., XIV., 439.

(c.) 14 April. Petition of Appellant, that the 204*l.* be not paid out of the Court of Chancery without an order from their Lordships. L. J., XIV., 464.

(d.) 24 Oct. Petition of Respondent. Petitioner is stayed from proceeding on the decree appealed from. Prays for a short day for hearing. L. J., XIV., 531.

216. Jan. 17. Edon's Act.—Consent of James Fish, a creditor of Thos. Edon, Esq., to the passing of the Bill. [Produced this day before the Committee. Com. Book of date. The Bill received the Royal Assent on 27 Jan. L. J., XIV., 427. 1 W. & M. c. 16 in Long Calendar.]

217. Jan. 21. Late Queen's Estate Bill.—Commons' Engrossment of an Act to vest in their Majesties the Lands and Estate belonging to

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the late Queen Mary, or to any other person in trust for her. Be it enacted, etc., That all manors, lands, tenements, possessions, reversions, and hereditaments whatsoever, belonging to the late Queen Maria, Queen Consort of the late King James II., or of, in or to which the said late Queen or any person or persons to the use of or in trust for her, was or were seized, possessed, interested or intituled either in Law or Equity, together with all rents, arrears, issues and profits of the same or any part of the same, shall be and are hereby vested and settled in their Majesties, and adjudged to be in the actual and real possession of their Majesties in such manner, according to such estate and with all such advantages and benefits as the said late Queen or the said person or persons had or might have had of, in or to the same; and that their Majesties may at all times hereafter enter into, have, hold, enjoy and recover the same, as if the same had been originally granted to their said Majesties.

And be it further enacted by the authority aforesaid, That all goods, chattels, sums of money, debts, duties, judgments, statutes, recognizances, obligations and other securities belonging to the said late Queen or to any person or persons to the use of or in trust for the said late Queen, shall be and are hereby vested and settled in their Majesties; and that their Majesties may at all times hereafter have, enjoy, demand, sue for and recover the same, as if they had been originally granted, had, made or taken to their Majesties or in their Majesties' name and to their use.

Saving and reserving nevertheless unto all and every person and persons and bodies politic and corporate, their heirs and successors, (other than the said late Queen and such person and persons seized, possessed, interested or intituled to the use of or in trust for her for and in respect of such use or trust only) all such right, title, interest, claim and demand whatsoever, either in law or equity, which they or any of them had before the making of this Act to any manors, lands, tenements or hereditaments, anything in this Act contained to the contrary in any wise notwithstanding.

Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to defeat, weaken or invalidate any contract or grant of, or for any leasehold or copyhold estate, or any other estate in the manor of Dauntzey in the county of Wilts, made or granted on or before the fourteenth day of June, 1688, *bonâ fide* and for a valuable consideration by the said late Queen Consort, her Commissioners or Feoffees in trust for her during her natural life, so as such consideration money due for such contract or grant, or any part thereof were not paid to the agents or trustees of the said late Queen since the eleventh day of December in the year of our Lord 1688, but that all such contracts and grants shall be, and are hereby declared to be, good and valid in law and equity to all intents and purposes whatsoever, as if this Act had never been made, anything in this Act contained to the contrary in any wise notwithstanding.

Provided always, and it is hereby declared and enacted by the authority aforesaid, That the arrears of rent that were due and owing from the tenants of the said lands of the said late Queen Mary before the eleventh day of December, in the year of our Lord 1688, be and shall be (as to so much as will answer the same, not exceeding 5,105*l.*) applied to the payment and satisfaction of the several and respective just debts due to the several tradesmen and others who served the late Queen with divers wares, goods and manufactures before her departure

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out of England, any thing aforesaid to the contrary thereof in any wise notwithstanding.

Provided always that nothing in this Act shall be construed or extend to bar or prejudice any right or title of entry or action which John Danvers of Prescot in the parish of Cropredy, in the county of Oxford, Esquire, had before the making of this Act to the manors of Dauntsey and Smithcott, or either of them, or to the rectory of Dauntsey, or to any messuages, lands, tenements or hereditaments in Smithcot or in the parish of Dauntsey in the county of Wilts, but that the same shall be and remain as it was. And the said John Danvers may have and take the like remedy therefore by ejectment or otherwise, as he might or could have had before the making of this Act, anything in this Act contained to the contrary notwithstanding.

Parchment Collection. [Brought from the Commons this day, but dropped after a First Reading. L. J., XIV., 421, 425.]

218. Jan. 21. Barbot's Naturalization Bill.—Draft of an Act for the Naturalization of John Barbot and others. The Bill is for naturalising the following, being all persons born out of their Majesties' Allegiance, but professing the true Protestant religion, and having given good testimony of their true, humble, dutiful and loyal affections to their Majesties and the good of the Kingdom of England, viz. :—

Name.	Parents.	Where born.
John Barbot -	James and Lewize Barbot -	St. Martyns of Ré.
Peter Longueville -	John and Catherina Longueville -	Cornatz.
James Pigou -	James and Judith Pigou -	Amiens.
Stephen Pigou -		
John Hanet -	Stephen and Elizabeth Hanet -	Burgundy.
John Desfray -	John and Catharina Desfray -	Tours.
David Barrau -	John and Marta Barrau -	Auriac.
Isaac Bonouvrier -	Isaac and Anna Bonouvrier -	Xaintes.
David Garrie -	Peter and Madalena Garrie -	Montpellier.
Peter Lauze -	Peter and Jaquette Lauze -	Nismes.
Joshua Soulard -	Stephen and Mary Soulard -	Xaintes.
*Paul Boyer -	Matthew and Claire Boyer -	Montpellier.
Lewis Soulard -	Daniel and Anna -	Monchamps.
Robert Badenhop -	Augustin and Madalena Badenhop -	Caen.
Noah Houssaye -	Noah and Margaretta Houssaye -	Tours.
Gabriel Augier -	Paul and Anna Augier -	Bordeaux.
John Lavie, junr. -	Henry and Mary Lavie -	Bordeaux.

* The names marked with italics are omitted in the Bill of 18 October 1690.

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Name.	Parents.	Where born.
Mozes James La Mousche.	Mozes and Esther La Mousche -	Paris.
*John Baudouin	John and Margaret Baudouin -	Tours.
Philipp Margas	Nicholas and Susanna Margas -	Rouen.
John Yzember	John and Michelle Yzember -	Montour.
Izaac Des Jardins	Claude and Mary Des Jardins -	Chateaudun.
*Joachim Goudet	John and Jane Goudet -	Montagnac.
Adrian L'Ernoul	Philipp and Antoinette l'Ernoul -	Amiens.
John Moteuz -	John and Judith Moteux -	Rouen.
Abraham Cardel	John and Magdalena Cardel -	Rouen.
John Ghiselin -	Nicholas and Anna Ghiselin -	Rouen.
Francis Pineau	Samuel and Mary Pineau -	Tours.
Francis Fornier	Francis and Madalena Fornier -	Guillerand.
Stephen Mazieq	Paul and Elizabeth Mazieq -	St. Martyns of Ré.
Peter Genevez	Peter and Suzann Genevez -	St. Paul Trois Chateaux.
Nathaniel Chauvet	Mark and Anna Chauvet -	Xaintes.
John De la Perelle	Alexander and Anna De la Perelle -	Caen.
Daniel Olivier -	Philipp and Mary Olivier -	Chandenier
Elias Dupuy -	Stephen and Lewize Dupuy -	Bordeaux.
Elizabeth Dupuy, wife of preceding.	[Parents not named] -	Bordeaux
Michael Dupuy	Elias and Elizabeth Dupuy -	Bordeaux.
Daniel Dupuy		
Elias Dupuy -		
James Testard	Paul and Catherina Testard -	Blois.
James Testard	James and Catherina Testard -	Paris.
Anthony Testard		
David Godin -	Nicholas and Judith Godin -	Havre-de-Grace.
David Godin -	David and [blank] Godin -	Havre-de-Grace.
Benjamin Godin		
*Anthony Beraud	Anthony and Margaret Beraud -	Tours.
Anthony Beraud	The said Anthony and Margaret Beraud.	Paris.
Stephen Faget	James and Mary Faget -	Meauvoizin.
Stephen Faget	The said Stephen and Anna Faget	Tours.

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Name.	Parents.	Where born.
Gabriel Tahourdin -	Peter and Anna Tahourdin -	Civray.
Gabriel Tahourdin -	The said Gabriel and Gabrielle Tahourdin.	Tours.
Charles Testard -	Paul and Catharina Testard -	Blois.
Rachel Testard, wife of preceding. Elias Rondeau -	[Not named.]	[Not named.]
Peter Pasquereau -	Elias and Elizabeth Rondeau -	Rochefort.
Daviere Baedouin -	Peter and Madalena Pasquereau -	Tours
Stephen Jordan -	Daniel and Jane Baudouin -	St. Martyns of Ré.
Stephen Jordan -	Elias and Madalena Jordan -	Fenestrelles.
*Peter Guénon -	Stephen and Mary Guenon -	Xaintes.
Anthony Faure -	John and Jane Faure -	Ganges.
*Peter l'Ernoul -	Philipp and Antoinette l'Ernoul -	Amiens.
Stephen Soulard -	Stephen and Mary Soulard -	Xaintes.
Stephen Peloquin -	Stephen and Mary Peloquin -	Rochell.
Charles Lason -	John and Antoinette Lason -	Valenciennes.
Francis Folchier -	David and Jane Folchier -	Uzez.
Abel Melier -	John and Madalena Melier -	Languedoe.
Jacob Liège -	Philipp and Madalena Liège -	Luzignan.
Jacob Massonneau -	Peter and Lewize Massonneau -	Lion.
James Dumoutier -	John and Anna Dumoutier -	Blois.
John Lavie, senr. -	Stephen and Jane Lavie -	Bordeaux.
John Monsallier -	John and Mary Monsallier -	Château-Gontier.
*Elias Nezereau, senr. -	Elias and Judith Nezereau -	Rochell.
*John De Cleves -	[Blank] and [blank] De Cleves -	St. Quentin.
*Elias Nezereau, junr. -	David and Mary Nezereau -	Rochell.

[Read 1^a this day : dropped after Commitment, L. J., XIV., 421, 426.]

219. Jan. 22. Van Mildret *v.* Wright.—Petition of John Wright. Petitioner having obtained a judgment in King's Bench against one Daniel Van Mildret in an action of ejectment for lands in Essex, Van Mildret, for delay has brought his writ of Error, but has failed to assign errors within the eight days prescribed by the Standing Order. Prays that the Writ and transcript may be remitted to the King's Bench for execution. L. J., XIV., 422. See also No. 187.

220. Jan. 24. Bishop of London's Privilege. (S. Howard).—Petition of Steven Howard, in custody of the Black Rod for speaking

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scandalous words of the Right Rev. the Lord-Bishop of London. Petitioner coming in a stage coach last Thursday from Beaconsfield, Bucks, to London, one Mr. Keck, a fellow-passenger, reported among other discourse the words for which Petitioner is accused. Petitioner innocently, though foolishly, repeated the words or to the same effect, as in their Lordships' order is set forth, and as Keck related. Acknowledges his crime and humbly begs pardon, particularly of the Reverend Lord Bishop whom he has so grossly offended. Petitioner, who is like to be utterly undone, having lost his service thereby, prays to be discharged. L. J., XIV., 425. [Howard had been ordered to be attached on the 17th, on motion made on behalf of the Bishop of London, the words complained of, which were spoken in a public coffee-house, being that the Bishop had made a new plot to make the Princess Anne of Denmark Queen of England. The Judges, being asked whether the action will be the same if he is punished here, replied in the affirmative, for here he is punished for a crime. L. J., XIV., 418; MS. Min., 17 Jan.]

221. Jan. 25. Oath of Supremacy (Ireland) Abrogation Bill.—Draft of an Act for the Abrogating the Oath of Supremacy in Ireland. Whereas by a Statute made in the Kingdom of Ireland in the Second year of the reign of Queen Elizabeth, intituled An Act restoring to the Crown the ancient jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all foreign Power repugnant to the same, the persons therein mentioned were obliged to take an Oath therein mentioned, commonly called the Oath of Supremacy, Be it enacted by the King and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from henceforth no person whatsoever shall be obliged to take the said Oath by force or virtue of the said Statute or any other Statute whatsoever, but that the said Statute and every other Statute made in the said Kingdom, for so much as concerneth the said Oath, and the said oath itself shall be and is hereby repealed, utterly abrogated and made void. And be it further enacted by the authority aforesaid, that the oaths appointed by this present Act to be taken shall from and after the day of in the year be taken by every such person and persons as are appointed or required by the said former Act, or any Act or Acts whatsoever to take the said abrogated Oath of Supremacy before such person or persons, and in all such cases as by the said former Act the Oath was enjoined or required to be taken, who are hereby empowered and required to tender and administer the same, and that every person and persons who were or was enjoined or required, or ought to take the Oath hereby abrogated, who shall neglect or refuse to take the Oaths appointed by this Act to be taken, shall incur and be liable unto all such penalties, forfeitures, disabilities and incapacities as by the said former Act or Acts were appointed for or upon refusal of the said former Oath commonly called the Oath of Supremacy. And be it enacted that the Oaths that are intended and required to be taken by this Act are the Oaths in the words hereafter following: I, A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary, So help me God. I, A.B. do swear that I do from my heart abhor, detest and abjure as impious and heretical that damnable Doctrine and Position that Princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate,

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state or potentate hath or ought to have any jurisdiction, power, superiority, preminence or authority, ecclesiastical or spiritual, within this realm, So help me God. [Read 1^a this day. L. J., XIV., 426. Dropped after Commitment (*ib.* 427) with the Session. Compare 3 W. & M. c. 2.]

222. Jan. 25. Poor Relief etc. Bill.—Corrected * draft of an Act for the better explanation and making effectual the Statutes made for the relief of the Poor. Whereas the Statute made in the thirty fourth † year of the reign of Queen Elizabeth, intituled An Act for the relief of the Poor, did principally intend the employing and setting the poor on work and the relief only of such as were unable to work, but by reason of the neglect of the due administration of that and other Acts made to the like end, the said Statutes have not had the effect intended, but of the contrary have been the great encouragement of idleness and increase of the poor. For remedy whereof Be it enacted by the King's and Queen's most Excellent Majesties, by and with the consent of the Lords Spiritual and Temporal in Parliament assembled, That the Churchwardens and overseers of every respective parish do duly observe and keep their monthly meetings by the said Statute made in the thirty fourth † year of the reign of Queen Elizabeth appointed, and do [also oftener] *in all cities, towns corporate and market towns weekly* and if occasion so require *oftener* (upon public notice to be given in the Church after Divine service) meet and assemble with the rest of the parish that do pay to the poor and where there are no select vestries with those parishioners that are of the vestry, and at their said meetings, by the consent and approbation of the greater part of those so assembled, put in due execution the powers and authorities by the said recited Statute or any other or this Statute given them.

And for that none can better know the poor of the parish, their lives and conversations, than the parishioners of every respective parish, Be it hereby enacted that the Churchwardens, overseers and parishioners or the greater part of them present in such their assemblies or meetings from and after the — day of — now next ensuing have the only power and authority from time to time to determine what persons within their parish are fit to be relieved by their parish and what relief from time to time to be given and to order and appoint the same accordingly.

And to the intent the parishioners of every parish may have it in their power to put this Act in due execution, it shall and may be lawful for the parishioners of every parish at such their meetings to examine upon oath, which they are hereby empowered to administer, or otherwise as they shall think fit concerning the premises, and for the sake of the parish from time to time to employ and place every poor person in their parish seeking or needing relief to work and labour either by the day or otherwise for such work, service or employment, and at such rates and in such manner as by the Sessions of the Peace, according to the Statutes in their behalf made, shall be appointed or otherwise as they, considering the qualities and abilities of the persons, shall judge best, and to licence at such their meetings, under the hands and seals of the Churchwardens and overseers of the said respective parish, and with marks or badges for distinction, as they shall think

* The additions are marked by italics and the omissions by square brackets. They must have been corrections made in the original draft, not amendments, for the Bill never got into Committee.

† Evidently a mistake for "forty third."

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best, such of their poor as need relief as they shall think fit to receive and take within their respective parishes, betwixt the hours of twelve and three of the clock, of the respective parishioners at their doors, but not otherwise or in other manner, their charity and relief; and such licences to recall at their pleasure, registering and entering such their rates, appointments, licences and revocations in a book by every parish to be kept for that purpose; and that if any person or persons [not having such licence with him to produce when demanded, or badge or mark or any licence,] shall ask or beg in any street, highway, churchyard, church-porch or other public place [or shall beg in the parish without license or], in any other manner than such his license shall import, such person or persons shall either upon the view or information given to the tithing man, headborough, or beadle of such parish, town or place, be immediately apprehended and conveyed to the constable of such parish or place, who shall immediately cause such person to be publicly whipped, and shall send him or her to the place where he or she was last legally settled, and shall make a certificate thereof to the next quarter sessions of the city, county or place where such correction shall be given, which shall be *there* entered upon record, and if any such person shall be again found begging contrary to the intent of this Statute, and be thereof convicted at the general Sessions of the Peace of the county, city or place where he or she shall be found so begging, he or she shall *by order of the said Sessions* be committed to the House of Correction, and from thence, as soon as may be, transported into some one of their Majesties' foreign Plantations, there to remain and continue for the space of _____ from the time of his or her arrival there.

And for the better putting in execution this Act, Be it enacted by the authority aforesaid, that if any tithingman, headborough, or beadle shall neglect or omit to perform his duty hereby required and enjoined, he shall forfeit the sum of _____ which shall be paid to the overseers of the poor for the poor's relief of the parish in which he shall be tithingman, headborough or beadle, and if any constable shall neglect his duty hereby required and enjoined, that then such constable shall forfeit the sum of _____, all which offences shall be heard and determined by any one justice of the Peace of the county, city, or place where such offence shall be committed, who by the oath of any one credible witness or by the confession of the party shall have such power to convict such person so offending and shall issue out his warrant under his hand and seal accordingly for the levying of the penalty incurred by such offender by distress and sale of the offender's goods directed to the churchwardens and overseers of the parish where such offence shall be committed.

And, *further*, for the better apprehending such beggars or persons as shall herein offend, It is hereby enacted, that it shall and may be lawful for the *persons* licensed [beggars] *to take relief* according to this Act to arrest and take such offender offending within their parish and carry him before the next constable, headborough, tithingman or beadle, and in case such *person* so licensed [beggar] neglect or refuse to arrest or take such offender or to give timely notice to the constable, headborough, tithingman or beadle of the respective parish or place where such offender is, if he be unable to arrest or carry him, to forfeit and lose his license and to be disabled of having any other license, and for every such arrest, taking and carrying by such licensed [beggar] *person* made or done, such licensed [beggar] *person* shall have for his encouragement two shillings and sixpence, to be paid him by the churchwardens or

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overseers of the parish where apprehended; and that every constable, headborough, tithingman and beadle that shall apprehend and take such offender, shall have for his reward in like manner paid the sum of five shillings, *the said sums in default of payment to be levied upon the goods of any of the churchwardens or overseers refusing to pay the same by warrant of any one Justice of the Peace to that end to be made*; and that all and every constable, headborough, tithingman and beadle shall and are hereby required to take their rounds in their respective parishes once at least in every week for finding out, discovering, taking and arresting such persons as shall offend herein and carry them before the next Justice of the Peace under the payment of [forty] *ten* shillings for his or their neglect of duty in this behalf, which neglect to be examinable by the parishioners in their said respective meetings or by one or more Justices of the Peace in Sessions or out of Sessions, and the said forfeiture to be levied by warrant of two Justices out of Sessions or the Justices in their Sessions in the county where such neglect committed by their warrant by distress upon the goods or imprisonment of the party as shall be thought best.

And for the preventing of all frauds in the overseers of the poor *and misspending the money of the parish in eating, drinking and entertainments at the parish charge*, Be it enacted by the authority aforesaid that the overseers of the poor of every parish shall at the time appointed by the said Act made in the forty-third year of the said late Queen Elizabeth for the making and yielding of their account, make oath in writing at the foot of the said account of the truth of all the particulars therein contained before the Justices of the Peace who shall take and receive the said account, *and are hereby required to disallow all charges and expenses for or about any Parish dinners, meat, drink or entertainments and all other unnecessary charges or expenses*, and who shall have sufficient authority to administer the said oath to such overseers; a true copy of which account and oath shall be entered in a book to be provided by the churchwardens of every parish for that purpose, and shall be kept in the vestry belonging to the church of the said parish and to which it shall and may be lawful to and for any inhabitant of the said parish to resort at any time and to peruse the same; and if any inhabitant shall find the said account to be false in any of the particulars, it shall and may be lawful to and for such inhabitant within the space of one year after the said account shall be entered and registered as aforesaid, at the General Sessions of the Peace to be held for the county, city or place, to prefer an information against such overseer or overseers as shall yield up the said account, which said Justices shall have full power and authority to hear and determine the same; and if any such overseer shall be found guilty of such falsity or deceit in his accounts, he shall pay to the overseer of the said parish five times the sum misreckoned in the said account, and shall also forfeit the sum of one hundred pounds, one moiety to the King and Queen's Majesties and the other moiety to the said informer, who shall likewise recover his costs of suit against such overseer or overseers.

And for the avoiding the ways and means that bring men to robbery, theft, poverty and beggary, Be it enacted that the parishioners of every respective parish at such their meeting shall and do examine and enquire what disorderly taverns, inns, ale-houses, bawdy-houses, gaming or music houses or other houses or places there are within their respective parishes wherein or whereby drunkenness, whoredom, idleness, playing, gaming or other corruptions and debaucheries are supported, nourished or maintained, and also what disorderly, idle

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licentious persons, having no visible estates or visible honest way of living are within their parishes, and do make and draw up a presentment in writing of all such disorderly houses, places and persons and such presentments to be under the hands of the churchwardens and overseers, if arising within the county of Middlesex, to the King's Bench, and if in any other county, then at the next Assizes, Oyer and Terminer or Goal delivery or at the General Quarter Sessions for the said county or place, upon which presentments Bills of Indictments shall be drawn, and the presentment shall be sufficient evidence for the finding such Bill whereupon trials to be had and the persons offending, if found guilty, punished according to law; and if the party convicted upon any such indictment shall offend in the like kind and thereof be again convicted upon the like or any other proceeding, the person so convicted shall be judged and taken and suffer as a rogue or vagabond and suffer such pains and penalties of transportation and otherwise as by any law or statute may be inflicted upon rogues or vagabonds.

And be it further enacted that if any Clerk of the Assize, Clerk of the Peace, or any of their associates, assistants, deputies or under-clerks shall or do delay or hinder or neglect due prosecution or by any indirect means help or cause any person presented as aforesaid to be discharged, he shall forfeit the sum of one hundred pounds, one half thereof for the benefit and relief of the poor of that parish in which the presentment was made, and the other half to him or them that shall prosecute for the same.

And whereas divers good Statutes have been heretofore made for the encouragement of labour and industry and preventing idleness, to wit, one Statute made in the fifth year of the late Queen Elizabeth, intituled an Act containing divers orders for artificers, labourers, servants of husbandry, and apprentices, one other Statute made in the first year of King James the First, intituled An Act made for the explanation of the Statute made in the fifth year of the late Queen Elizabeth's reign concerning labourers, which have been neglected to be put in execution, whereby idleness, disorders, and miscarriages amongst servants are so much increased as scarce longer tolerable, Be it enacted that the said laws and Statutes, and all and every other law and Statute now in force concerning labourers and servants and every article and clause therein [(except only that part of the said Statute made in the fifth year of Queen Elizabeth whereby it is enacted that none shall set up, occupy, use, or exercise any craft, mystery, or occupation then used or occupied within the realm of England or Wales, except he have been brought up therein seven years as an apprentice nor set on work in such craft, mystery or occupation any person but such as have served as an apprentice, which is hereby repealed)] shall be put in due execution under the penalties in the said Statutes contained.

And be it further enacted by the authority aforesaid, that if for any the offences against this Act or any other the laws or Statutes concerning the poor or concerning beggars, rogues or vagabonds [or the highways] any forfeitures *leviable by warrant and distress* shall be incurred which shall not be paid or levied by distress within the space of _____ months after the same incurred, it shall and may be lawful for any person to sue for, demand, and recover the same in any of their Majesties' Courts of Record by any action, bill, plaint, or information, in which suit costs shall be awarded for the plaintiff or defendant, as the case shall happen, as in any other action of debt or case is used and accustomed.

This Act to commence and take effect from the _____ day of _____ now next ensuing and not before.

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And it is further enacted and declared by the authority aforesaid, that such number of the Justices of the Peace within the several counties of Wales shall and may be named and appointed by Commission under the Great Seal of England as to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the said Great Seal shall from time to time seem meet, any law, statute, or usage, to the contrary thereof in anywise notwithstanding. And that no person hereafter to be made or put into the Commission of the Peace shall be compelled to pay or be charged with more than the sum of ten shillings for or by reason of any warrant, Commission, or Dedimus Potestatem for taking his oath or taking on him the office or place of a Justice of Peace. [Read 1^a this day, dropped, after a second reading, with the Prorogation on 27 Jan. L. J., XIV., 425, 427.]

223. Jan. 25. Protections. — List of names of such persons as have entered their Protections in the Sheriff's Office in the Poultry, and of the persons by whom they are protected. A note states that of the persons (38) protected by L. Morley and Mounteagle, his Lordship has since by letter disowned all but Thomas Lamplugh, Esq., and George Penney. *Signed* Philip Perry, for Mr. Secondary Trotman. *Endorsed* as bought in this day. L. J., XIV., 426. [This and the two following lists were brought in in pursuance of an Order of the 21st, addressed to the Sheriffs of London and Middlesex (L. J., XIV., 421), on a motion made to that effect (MS. Min., 21 Jan.) There is no record of any proceedings of the Committee for Privileges, to whom these lists were referred. *See also* No. 241.]

Annexed:—

(a.) 25 Jan. 1689-90. List of Protections entered in the Sheriff's Office in Wood Street, London. *Signed* Will Foxall for Mr. Normansell. *Endorsed* as brought in this day. L. J., XIV., 426.

(b.) 25 Jan. 1689-90. List of Protections in the Middlesex Office. *Signed* Thos. Hooper. *Endorsed* as brought in this day. L. J., XIV., 426.

(c.) 25 Jan. 1689-90. Letter of L. Morley and Mounteagle to Mr. Broad, one of the officers belonging to the Sheriff of Middlesex. Understands that he has arrested one William Bayford, who is his Lordship's servant and has his protection. Commands him to discharge Bayford from custody. *Dated* 24 Jan. *Endorsed* as delivered this day.

224. Jan. 27. Bateson's Bill. — Consent of Theophilus Hooke, clerk, and Carolina Bateson, wife of William Bateson, to the passing of the Bill. *Dated* 6 Jan. 1689-90. [Produced this day in Committee on the Bill. Com. Book of Date.]

Annexed:—

(a.) 7 Jan. 1689-90. Letter from Lacy Osbaldeston, declaring his consent, as a trustee. *Signed* in presence of Giles Diston and Hen. Osbaldeston, Clerk. Addressed to Sir Thos. Littleton, to be left at the door of the House of Commons.

225. March 20. Speaker. — Commission signed by the King, dated 18 March, to the Chief Baron, Sir R. Atkyns, to be Speaker. *Parchment Collection.* [Read this day. L. J., XIV., 430. *In extenso.*]

226. March 20. Test Roll (25 Car. II. c. 2).—Roll for the Parliament begun this day, containing the signatures (6) of Lords to the

Declaration in the Act of 1672 for preventing dangers which may happen from Popish Recusants. The first signature is Lumley, *Undated*, the second J. Ebor, 5 Oct. 1691, and the last Scarborough, 13 March, 1692. *Parchment Collection*.

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227. March 20. Test. Roll (30 Car. II. Stat. 2. c. 1).—Roll for the Parliament begun this day, containing the signatures (166) of Lords to the Declaration in the Act of 1678 for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament. The first signature is Carmarthen, P., this day, and the last, Bergavenny, 1 May, 1695. *Parchment Collection*.

228. March 20. Oaths Roll (1 W. & M. c. 1).—Copy Roll for the Parliament begun this day, giving the names (166) of the Lords who took the Oaths in pursuance of the Act of 1688 for removing and preventing all Questions and Disputes concerning the assembling and meeting of this present Parliament. The first name is Thomas, Marquess Carmarthen, P., this day, and the last George, Lord Abergavenny, 1 May 1695. *Parchment Collection*.

229. March 20. Garter's Roll.—A roll of the Peers of the Kingdom of England, the 20th of March 1689. *Signed* Tho. St. George, Garter, and *noted* The Roll was amended by the Herald the 24 April 1690. [Apparently by the addition of Peregrine Osborne de Keveton.] *Parchment Collection*.

230. March 20. Writs of Summons, dated 6 Feb., to the following Lords, who took the Oaths this day (L. J., XIV., 431):—

- (a.) Charles, D. Southampton.
- (b.) George, D. Northumberland.
- (c.) Charles, D. Bolton.
- (d.) George, M. Hallifax, Lord Privy Seal.
- (e.) William, E. Bedford.
- (f.) George, E. Suffolk.
- (g.) George, E. Northampton.
- (h.) Basil, E. Denbigh.
- (i.) Charles, E. Manchester.
- (k.) Thomas, E. Rivers.
- (l.) Henry, E. Stamford.
- (m.) Thomas, E. Falconberg.
- (n.) Francis, V. Newport.
- (o.) Thomas, V. Weymouth.
- (p.) Henry [Compton], Bp. London.
- (q.) Nathaniel [Lord Carew], Bp. Durham.
- (r.) Peter [Mew], Bp. Winchester.
- (s.) William [Lloyd], Bp. St. Asaph.
- (t.) Gilbert [Burnet], Bp. Salisbury.
- (u.) Humphrey [Humphreys], Bp. Bangor.
- (v.) Nicholas [Stafford], Bp. Chester.
- (w.) Edward [Stillingfleet], Bp. Worcester.
- (x.) Simon [Patrick], Bp. Chichester.
- (y.) Henry Yelverton de Grey de Ruthin, Chr.
- (z.) Charles North de Kirtling and North Grey, Chr.
- (aa.) John Lovelace, Chr.
- (ab.) Thomas Coventry de Alesborough, Chr.
- (ac.) Henry Herbert de Cherbury, Chr.
- (ad.) Charles Clifford de Lanusburgh, Chr.
- (ae.) Robert Lucas de Shendile, Chr.
- (af.) John Ashburnham, Chr.

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231. March 20. Writ of Summons. (L. Kiveton.)—Writ of Summons, dated 14 March, to Peregrine Osborne de Kiveton, Chr., who was introduced and took the Oaths this day. L. J., XIV., 431.

232. March 21. Writs of Summons, dated 6 Feb., to the following Lords, who took the Oaths this day (L. J., XIV., 432):—

(a.) Thomas Parker de Morley and Mount Egle, Chr.

(b.) Henry Booth Delamere, Chr.

(c.) Sydney Godolphin, Chr.

233. March 24. Writs of Summons, dated 6 Feb., to (a) William E. Portland, and (b) Ralph Eure, Chr., who took the Oaths this day (L. J., XIV., 436).

234. March 24. Tithes (Small) and Repair of Churches Bill.—Amended* draft of an Act for the more easy recovery of small tithes and for the repair of Churches.

The Bill is as follows, the text, where retained in the Act of 1696, being given only so far as to show the variations from the Act:—

Clause 1 of Bill.

Sect. 1. Act of 1696 (7 & 8 W. III. c. 6).

Line.†

For the more easy and effectual recovery of small tithes and of the value of them, where the same shall be unduly substracted and detained, and for the repair of Churches,‡ Be it enacted by the King and Queen's most excellent Majesties.

. . . all persons shall henceforth well and truly set out and pay all and singular their tithes, commonly called small tithes, composition and agreement for the same, with all their offerings.

. . . are due.

. . . oblations or obventions [So also in Clause 6 *bis*, and Clause 10 *bis*.], as aforesaid, then it shall and may be lawful.§

. . . make their complaint.

. . . their Majesties' Justices [So also in Clauses 7 and 8.] within that County, City. [So also in Clause 7.]

. . . Division, *where the same shall grow due*, whereof neither of them is to be patron of the Church or Chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations or obventions as aforesaid, who are hereby authorized.

1 For the more easy and effectual recovery of small tithes and the value of them, where the same shall be unduly substracted and detained, where the same do not amount to above the yearly value of 40s. from any one person, Be it enacted by the King's most Excellent Majesty.

5 . . . all and every person or persons shall henceforth well and truly set out and pay all and singular the tithes, commonly called small tithes, and compositions and agreements for the same, with all offerings.

7 . . . are or shall be due.

10 . . . oblations, obventions or compositions, as aforesaid by the space of twenty days at most after demand thereof, then it shall and may be lawful.

12 . . . make his or their complaint.

13 . . . his Majesty's Justices within that County, Riding, City.

14 . . . Division, where the same shall grow due, neither of which Justices of Peace is to be patron of the Church or Chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations, obventions or compositions aforesaid.

* The amendments, where the text is set out, are shown in the usual manner, vizt., the additions by italics, and the omissions by square brackets.

† The references are to the Folio Edition of the Statutes.

‡ The words "and for the repair of Churches" were added by the Lords to the Commons' Bill of 29 June 1689. See No. 126.

§ The Commons' Bill of 29 June 1689, as amended by the Lords, ran thus: "then it shall be lawful for the person or persons to whom the same shall be due [may] to make."

Line. . . . Sect. 2.

1 And be it further enacted, by the authority aforesaid, that if hereafter any suit or complaint shall be brought to two or more Justices of the Peace as aforesaid, concerning small tithes, offerings, oblations or compositions as aforesaid, the said Justices are hereby authorized.

. . . Justices of the Peace. [So also in Clause 3.]

. . . oblations or obventions.

. . . withheld,* together with such costs and charges as upon the merits of the case shall appear just.

6 . . . Justices of Peace.

9 . . . oblations and compositions.

” . . . withheld, as they shall judge to be just and reasonable, and also such costs and charges, not exceeding ten shillings, as upon the merits of the cause shall appear just.

Clause 2.

. . . ten days to pay and satisfy.

. . . two Justices.

. . . constables or churchwardens of the said parish, or any of them.

. . . after distraining (*sic*) them by the space of six days.

. . . charges for detaining.

. . . be not tendered.

. . . may make sale of the same and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for keeping the said distress as the said Justices shall think fit, and shall render the overplus to the owner.†

Sect. 3.

1 . . . ten days, after notice given, to pay or satisfy.

2 . . . two or more Justices.

” . . . constables and churchwardens of the said parish, or one of them.

5 . . . after detaining them by the space of three days.

6 . . . charges for making and detaining.

7 . . . be not tendered or paid.

” . . . may make public sale of the same and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distress as the said Justices shall think fit, and shall render the overplus, if any be, to the owner.

Clause 3.

. . . matters referred to them.

. . . unto witnesses.

. . . discovery of truth.

Sect. 4.

2 . . . matters offered to them.

” . . . to any witness or witnesses.

3 . . . discovery of the truth.

Clause 4.

. . . that this Act, nor anything herein contained, shall extend.

. . . offerings, oblations or obventions.

Sect. 5.

1 . . . that this Act, or anything herein contained, shall not extend.

2 . . . oblations, payments or obventions.

* The words “together with such costs and charges” were originally added by the Lords to the Commons’ Bill of 29 June 1689. (Com. Book.)

† In the Commons’ Bill of 29 June 1689 this passage was amended by the Lords as follows: “may make sale of the same and [retain for themselves] *pay to the party grieved* so much of the money arising by such sale as may satisfy the said sum so adjudged, [together with] *retaining for themselves* such reasonable charges . . . and [rendering] *shall render* the overplus,” etc.

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V.* Provided also and be it enacted, that no person who shall make his complaint to any Justices of the Peace for any tithes, offerings, oblations or obventions [and obtain judgment thereupon] by virtue of this Act, shall or may, *after such complaint made and any proceedings thereupon for the same matter or thing, have any further or other remedy in any of their Majesties' Courts Ecclesiastical [or Temporal] within this Kingdom; And if at any time hereafter any such suit for such Small Tithes, offerings, oblations, obventions or Church-rates shall be commenced in any Ecclesiastical Court, the proceedings in such suit shall be summarily and vivâ voce, without delay or vexation, and shall be heard and determined in one or two court days at most, And that no person shall be hereafter excommunicated for not obeying the summons or sentence of the Ecclesiastical Court in such suit for small tithes, but† if any person shall be cited before the Ordinary for not paying his tithes, oblations, offerings, or other ecclesiastical dues, and upon return made of such citation, shall not appear at the time appointed, and shall wilfully abstain from appearing for one Court day after the said return, or, appearing, shall not make answer to the Petition or Libel of the Complainant, that then the Ordinary shall examine upon oath ex parte what small tithes or composition for the same, and what offerings, oblations, obventions and other ecclesiastical dues were justly due from the person or persons so summoned at the time of the said summons, and proceed to give sentence as if the said person had appeared, and upon the [not appearing or] disobedience of [any] such person to the said sentence, the Ecclesiastical Judge shall certify the same unto two Justices of the Peace of the County where the cause of such suit or complaint shall arise, who‡ shall have full power and authority by virtue of this Act, and are hereby required, upon receipt of such certificate, to send their warrant or warrants, under their hands and seals, directed to the constables, churchwardens or tithingmen of any such parish, township or village where the person or persons, whose disobedience to any such sentence shall be so certified, then hath or shall have any goods or chattels, thereby requiring them to levy all und every such sum and sums of money which shall be mentioned and expressed in such certificate, by distress and sale of the said goods and chattels or any part thereof, restoring unto such person or persons the overplus of such goods or chattels over and above the said sum or sums of money, and the reasonable charge of making such distress, which he or they are to deduct out of the money raised by sale of such goods and chattels, which said constables, churchwardens and tithingmen are hereby authorised and required to levy the said money accordingly, and to pay the money so levied to such person or persons, his or their assigns, who first commenced the said suit in the ecclesiastical Court; and in case such person or persons, who shall be mentioned in such certificate, shall not have any goods or chattels, whereupon any distress can be taken, that then the said Justices of the Peace shall proceed as by the Statute of*

* The Committee, after agreeing to the Bill to this point, directed Mr. Justice Nevill to amend the two next clauses upon the debate. (Com. Book, 28 March.) On 2 April he offered the clauses he was appointed to draw, which were read. His draft with the amendments, which corresponds with Clause V. in the text above, as amended, is probably Annex (e.) below. A clause offered instead thereof by the Chairman, the Bishop of London, was read.

† The amendment that follows in italics is taken from Paper A. (Annex (c.) below), which is marked for insertion here on the draft.

‡ The amendment that follows in italics is taken from Paper B. (Annex (d.) below), which is marked for insertion here on the draft.

the 27th of Henry VIII. Chap. 20, Entitled For Tithes to be paid throughout this Realm, is provided; And in case any Ecclesiastical judge shall proceed otherwise, then the suit is and shall be dismissed from the Ecclesiastical Court with costs.

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Clause 6.	Line.	Sect. 6.
. . . offerings, oblations or obventions, <i>hereafter due</i> .	1	. . . offerings, oblations, obventions or compositions, <i>hereafter due</i> .
. . . space of <i>one year</i> after the time.	3	. . . space of two years next after the times.
. . . due and payable.	4	. . . due or payable.
Clause 7.		Sect. 7.
. . . himself aggrieved.	1	. . . him, her or themselves aggrieved.
. . . General or Quarter Sessions.	2	. . . General Quarter Sessions.
. . . two Justices, they shall then confirm and decree.	6	. . . two Justices of the Peace, they shall then decree.
. . . give such further costs.	7	. . . give such costs.
Clause 8.		Sect. 8.
. . . holding away.	2	. . . withholding.
. . . any such Small Tithes or other dues, shall, before the Justices of Peace . . . insist upon any* composition or . . . and shall prove the same by two witnesses upon oath, and shall then give reasonable and sufficient security.	"	. . . any Small Tithes or other duties, shall, before the Justices of the Peace . . . insist upon any prescription, composition or . . . and deliver the same in writing to the said Justices of the Peace, subscribed by him or her, and shall then give to the party complaining reasonable and sufficient security.
. . . against him or them.	8	. . . against him, her or them.
. . . Judgment in the matter so complained of, anything in this Act to the contrary notwithstanding.	10	. . . Judgment in the matter; and that then and in such case the person or persons so complaining shall and may be at liberty to prosecute such person or persons for their said subtraction in any Court or Courts whatever, where he, she or they might have sued before the making of this Act; anything in this Act to the contrary notwithstanding.
Clause 9.		Sect. 15.
. . . continue for seven years.	1	. . . continue for the space of three years.
Clause 10.†		Sect. 9.
. . . cause and procure.	3	. . . cause or procure.
. . . have for the inrolment of any one judgment more than <i>one shilling</i> .	6	. . . ask or receive for the inrolment of any one judgment any fee or reward exceeding one shilling.
. . . satisfaction of paying the same.	7	. . . satisfaction made by paying the same.

* A Lords' Amendment in Sk. 4, line 28, of the Commons' Bill of 29 June 1689 was to leave out the word "prescription," which occurred here in that Bill.

† In amending the Commons' Bill of 29 June 1689 the Lords added the words in this clause "or against whom any Judgment shall be obtained" and substituted "may cause and procure" for "shall cause and procure." Both these amendments are embodied in the above draft and appear also in the Act.

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. . . vicars or other persons suing for the said Small Tithes, oblations or obventions, in any other Court where they shall commence any suit for the recovery thereof.

8 . . . vicars and other persons from any other remedy for the said Small Tithes, oblations, obventions or compositions, for which the said Judgment was obtained.

XI. Provided also that this Act nor anything herein contained shall extend to any Peer of this realm, so as to subject such Peer to any summons or proceedings of any Justices of the Peace or Ecclesiastical Judge for or touching the matters aforesaid; but such vicars or other person shall have such remedy against a Peer as they might have had before the making of this Act.

XII. And be it further enacted by the authority aforesaid, that the Churchwardens of every parish within this Kingdom and Dominion of Wales and Town of Berwick-upon-Tweed, by consent of the inhabitants at any parish meeting whereof notice has been given at the Church on the Sunday before,* or the major part of them there shall,† as often as occasion shall require, make a tax for the repair of Churches and other ecclesiastical rates, and the same being confirmed and signed by two Justices of the Peace at their monthly meeting, shall be collected and levied, and in case of neglect or refusal to pay such rate upon reasonable demand and no appeal being made to the next Quarter Sessions, that the same shall be levied by distress and sale of the goods of the party taxed, in such manner as may be made for the Poors Rate by force of a Statute made in the forty-third year of Queen Elizabeth; and that the Churchwardens shall give an account of their receipts and disbursements‡ chargeable by virtue of this Act to the said Justices, in such manner as is required by the said Act for rates levied for the relief of the Poor; and in case of an appeal to the Quarter Sessions, the Justices of the Peace there shall have power finally to hear and determine the same.§

XIII. Provided that nothing in this Act shall extend to take away or diminish the power or jurisdiction of the Bishops, archdeacons and their ordinaries, but that in their visitations *and their other Courts* they may proceed in all matters of [Church] repairs and dilapidations of Churches, as they might have done before the passing of this Act.||

XIV. *And it is hereby enacted and declared, that the Ministers, Rectors and Vicars of every parish in every city or town within the Kingdom of England, Dominion of Wales and Town of Berwick-upon-Tweed, shall by virtue of this Act have the same remedy and manner of proceeding for recovery of every sum or sums of money charged or taxed upon any house or houses within their several and respective parishes, for their dues and duties, as is herein-before given to any other person for the recovery of any Tithes or other duties*

* These words "by consent . . . Sunday before" were added as a Lords' Amendment to the Commons' Bill of 29 June 1689. (Com. Book, 19 July 1689.) See No. 126.

† The Bill of 29 June 1689 here contained originally the words "at any parish meeting," which were struck out by the Lords. (Com. Book, 19 July 1689.)

‡ The words "chargeable by virtue of this Act" were added as a Lords' Amendment to the Bill of 29 June 1689. (Com. Book, 19 July 1689.)

§ In the Bill of 29 June 1689 the Lords here added a Proviso A., which, like the Bill itself, is wanting. (Com. Book, 16 Aug. 1689.)

|| The clause that follows in italics is taken from Paper C. (Annex (f.) below, which is marked for insertion here on the draft.

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hereinbefore mentioned, except where the recovery of such sum or sums of money is otherwise specially provided for by any other Act of Parliament; and also that all parish Clerks and Sextons shall have and use the same remedy and manner of proceeding for the recovery of all wages and dues belonging to them, and likewise that the same manner of proceeding shall be taken and used for the recovery of all Church Rates.

[XIV.] *XV.* And be it further enacted by the authority aforesaid, that if any person or persons against whom any such judgment or judgments shall be had as aforesaid, shall remove out of the County, riding, city or corporation after judgment had as aforesaid and before the levying the sum or sums thereby adjudged to be levied, the Justices of the Peace or ecclesiastical judge who made the said judgment shall certify the same under his or their hands and seals to any Justice of Peace or Chief Magistrate of such other county wherein the said person or persons are inhabitants, which said Justice or Chief Magistrate respectively is hereby authorized and required to levy the sum or sums so adjudged to be levied as aforesaid upon the goods and chattels of such person or persons as fully as the said other Justices might have done in case he, she or they had not removed as aforesaid.*

[XV.] *XVI.* Provided always and be it enacted, That no vicar or other person shall have remedy to recover Small Tithes or other dues aforesaid which incurred or were due before the making of this Act, unless complaint be made to the Justices of the Peace or Ecclesiastical Judge in form aforesaid within *one* year after the making of this Act; And from henceforth during the continuance of this Act it shall not be lawful for any person whatsoever to commence or prosecute any action, suit or plaint in any of their Majesties' Courts ecclesiastical or temporal for the recovery of any Small Tithes or other dues aforesaid whatsoever otherwise than is by this Act provided, unless in such cases wherein the right or title to such tithes or other dues aforesaid shall be concerned.†

XVII. Provided always and be it enacted by the authority aforesaid, that no suit for Small Tithes or other dues recoverable by this Act shall be prosecuted in the Ecclesiastical Court unless such Court shall be within the distance of twenty miles from place where the cause of action, whereon such suit is grounded, shall arise, anything in this or any other Act to the contrary notwithstanding. [Read 1st this day. (L. J., XIV., 436.) The Committee, with the Bishop of London as Chairman, met on March 27, 28, 31, and April 2 and 4. On March 31 the Quakers, desiring to be heard, were called in. They desire that the clause relating to the confinement of their persons for Small Tithes may be left out. They had rather that their goods may be distrained, but pray their persons may not be distrained. On 2 April they offered a Paper, which was not read. (Com. Book.) The Bill being reported with amendments on 5 April, on report, the House recommitted it upon the single point of the distance of place from the Ecclesiastical Courts. (L. J., XIV., 450.) In Committee, on recommitment, a Proviso relating to this point was read and agreed to, it being the clause at the end of the Bill. (Com. Book, 8 April.) This Proviso was agreed to on report, with an amendment, namely, the substitution of "twenty"

* In the Commons' Bill of 29 June 1689 the Lords had an amendment to "leave out in Sk. 7, l. 22, from (aforesaid) to the end of the Bill." (Com. Book, 16 Aug. 1689.)

† The clause that follows in italics is taken from Paper D. (Annex (g.) below), which is marked here on the draft for addition at the end of the Bill.

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for "ten" miles. (L. J., XIV., 453.) The Bill finally dropped in the Commons. C. J., X., 373, 408.]

Annexed:—

- (a.) Paper containing the following: "An Act for payment of Tithes in all Counties in England. 27 Hen. VIII. c. 20. C. 19. An Act concerning Tithes in London."
- (b.) 5 April. List of Lords' Amendments to the Bill. [Made in Committee March 28, 31, April 2, 4 (Com. Book), and reported this day. (L. J., XIV., 450.)]
- (c.) 5 April. Clause marked A., being the amendment ("if any person . . . answered and"), embodied in Clause V. of the text above. [Agreed to in Committee 2 April (Com. Book), and reported this day.]
- (d.) 5 April. Paper containing some amendments, including a clause marked B. ("shall have full power . . . Justices of the Peace"), embodied in Clause V. of the text above. [Agreed to in Committee 2 April (Com. Book), and reported this day.]
- (e.) 5 April. Fair copy of Clause V. of the Act as amended.
- (f.) 5 April. Paper containing further amendments, including a Clause marked C. ("And it is hereby enacted . . . recovery of all Church Rates"), embodied as Clause XIV. in the text above. [Agreed to in Committee 4 April (Com. Book), and reported this day.]
- (g.) 8 April. Amended Proviso marked D., added as Clause XVII. to the text above. [Agreed to in Committee, on recommitment (Com. Book, 8 April), and amended on report this day. (L. J., XIV., 453.)]
- (h.) Amended (or corrected) Proviso marked A. as follows: "Provided that in case the said Justices of the Peace or Ecclesiastical Judge shall refuse to receive such reasonable security, the party or parties so aggrieved may in such case apply him, her or themselves to the Justices of the Peace at the General Quarter Sessions, who are hereby empowered to take such reasonable and sufficient security. [No reference is found to this Proviso, which was no doubt intended to follow Clause VIII. of the Bill.]
- (i.) Draft proviso, marked B., as follows: "Provided also and be it enacted, That the manner and method prescribed by this Act for the recovery of Small Tithes, etc., shall and may be extended to all causes relating to the recovery of wages and dues belonging to Parish Clerks and Sextons within the Kingdom of England, Dominion of Wales and Town of Berwick-upon-Tweed, any law, custom or usage to the contrary notwithstanding." [No reference is found to this Proviso, which was probably superseded by Clause XIV. in the text above.]

1690.

1690.

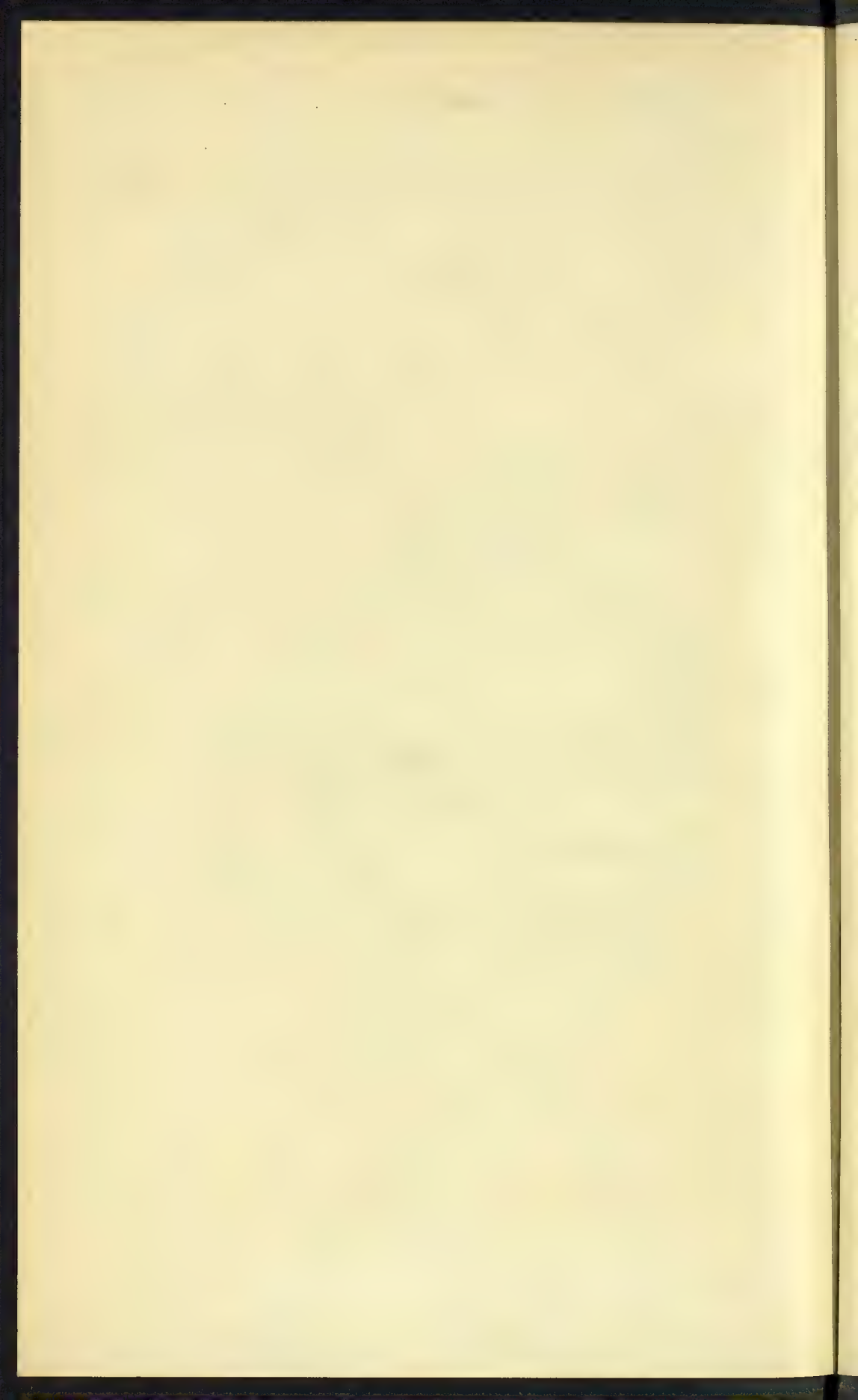
235. March 25. Writ of Summons. (L. Chandos.)—Writ of Summons, dated 6 Feb., to James Bruges de Chandos, Chr., who took the Oaths this day. L. J., XIV., 437.

236. March 25. Le Grand's Naturalisation Act.—Draft of an Act for Naturalising of David Le Grand and others. [Read 1st this day. Royal Assent 2 May. L. J., XIV., 437, 483, 2 W. & M. c. 17 in Long Calendar.]

Annexed:—

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- (a.) 27 March. Certificates produced in Committee this day (Com. Book), that the following persons (named in the Act) had received the Sacrament according to the usage of the Church of England, viz.:
- (1.) David Le Grand, on 23 Feb. last at the Dutch Church in London. The certificate adds that he is a member of that Church. *Signed* Adrianus von Oostrum, Minister; Justus Otgherz, Elder; David Debary, Deacon. *Dated* 26 March 1690.
 - (2.) John Stahelin, of London, Merchant, on 26 March 1690 at the parish Church of St. Mary Aldermary. *Signed* Laurence Newton, Minister; John Parry, Curate; Robert Lasley, Parish Clerk. *Dated* 26 March 1690.
 - (3.) Isaiah de Walpergen, of London, Merchant, on 26 March 1690, at the parish Church of St. Mary Aldermary. *Signed* as preceding. *Dated* 26 March 1690.
 - (4.) Gerhard Menschgen, on 23 March at the Lutheran, late Parish Church of Trinity the Less. *Signed* John Esdras Edzard, Minister. *Undated*.
 - (5.) John Germaine, of St. Margaret's Westminster, Esq., on 26 March 1690 at the Parish Church of St. Mary Aldermary. *Signed* as (2) and (3). *Dated* 26 March, 1690.
 - (6.) Abraham Craiesteyn, of London, Merchant, on 26 March 1690 at the parish Church of St. Mary, Aldermary. *Signed* as preceding. *Dated* 26 March 1690.
- (b.) 26 April. Certificates brought from the Commons this day, (L. J., XIV., 475) that the following persons (named in a Schedule to the Act, added by the Commons) had received the Sacrament. (*See* C. J., X., 388.)
- (1.) John Dorryes, Henry Philip Kugelman and George Ludewick Dunt, on 23 March, at the true Protestant Lutheran late parish church Trinity the Less. *Signed* John Esdras Edzard, Minister, Theodore Jacobsen, Cornelio Beckhoff, and David Beueler. *Dated* 24 March 1689-90.
 - (2.) Edward Braughton of St. Magnus, London, Esq., on 30 March, at St. Peters, Cornhill. *Signed* Will. Beveridge (D.D.) Minister; Rich. Williams, Churchwarden. *Dated* 30 March 1690.



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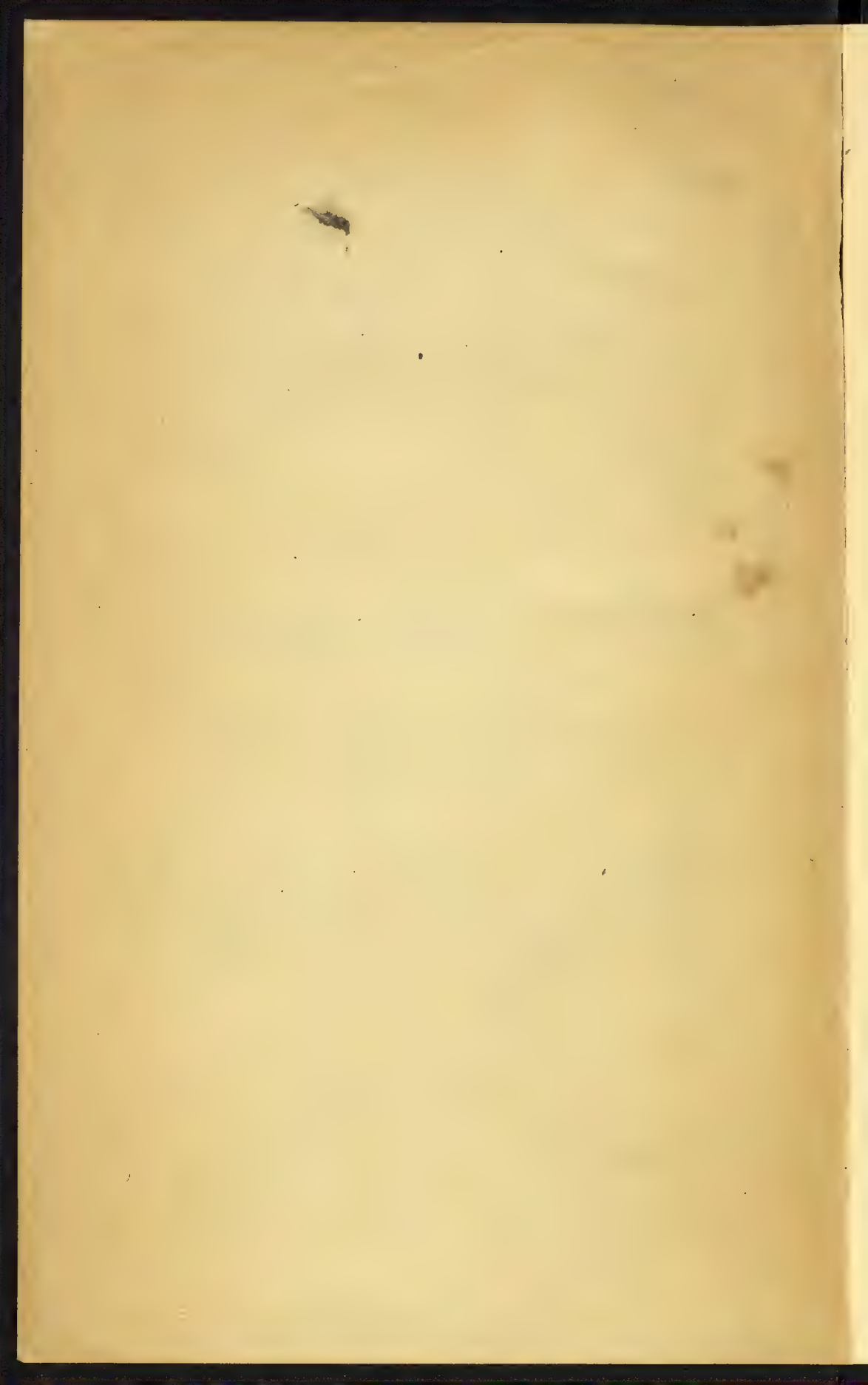
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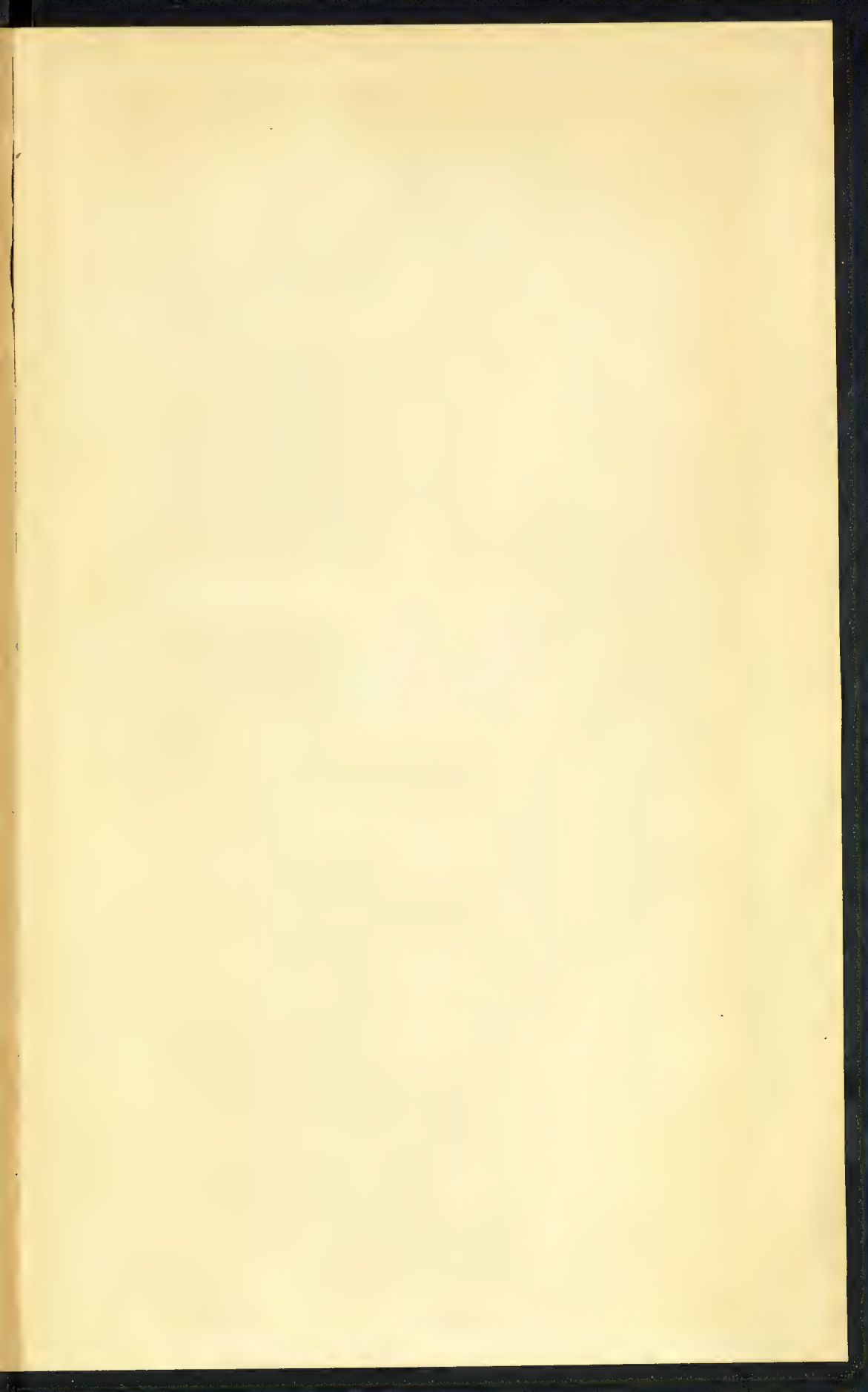
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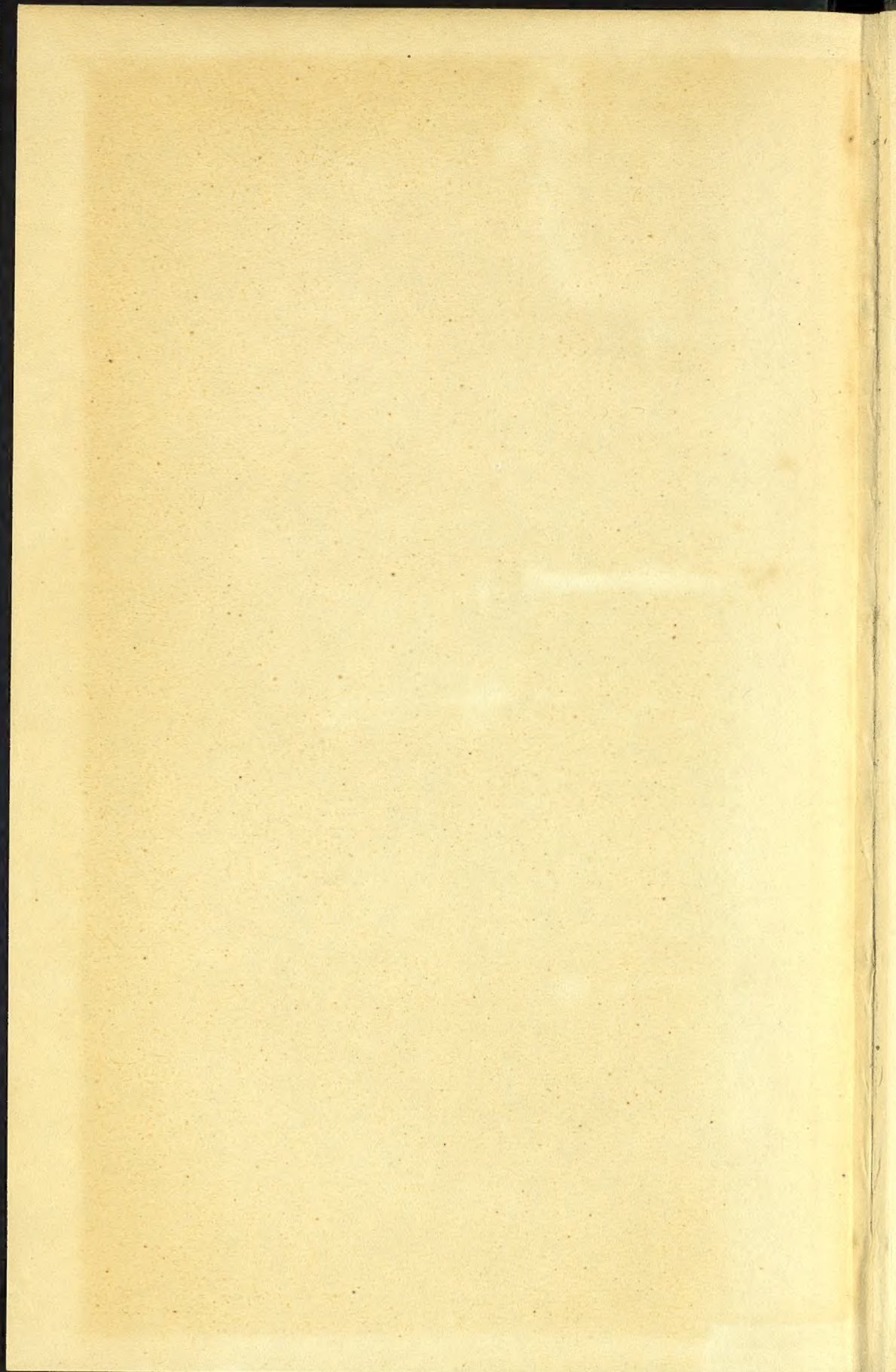
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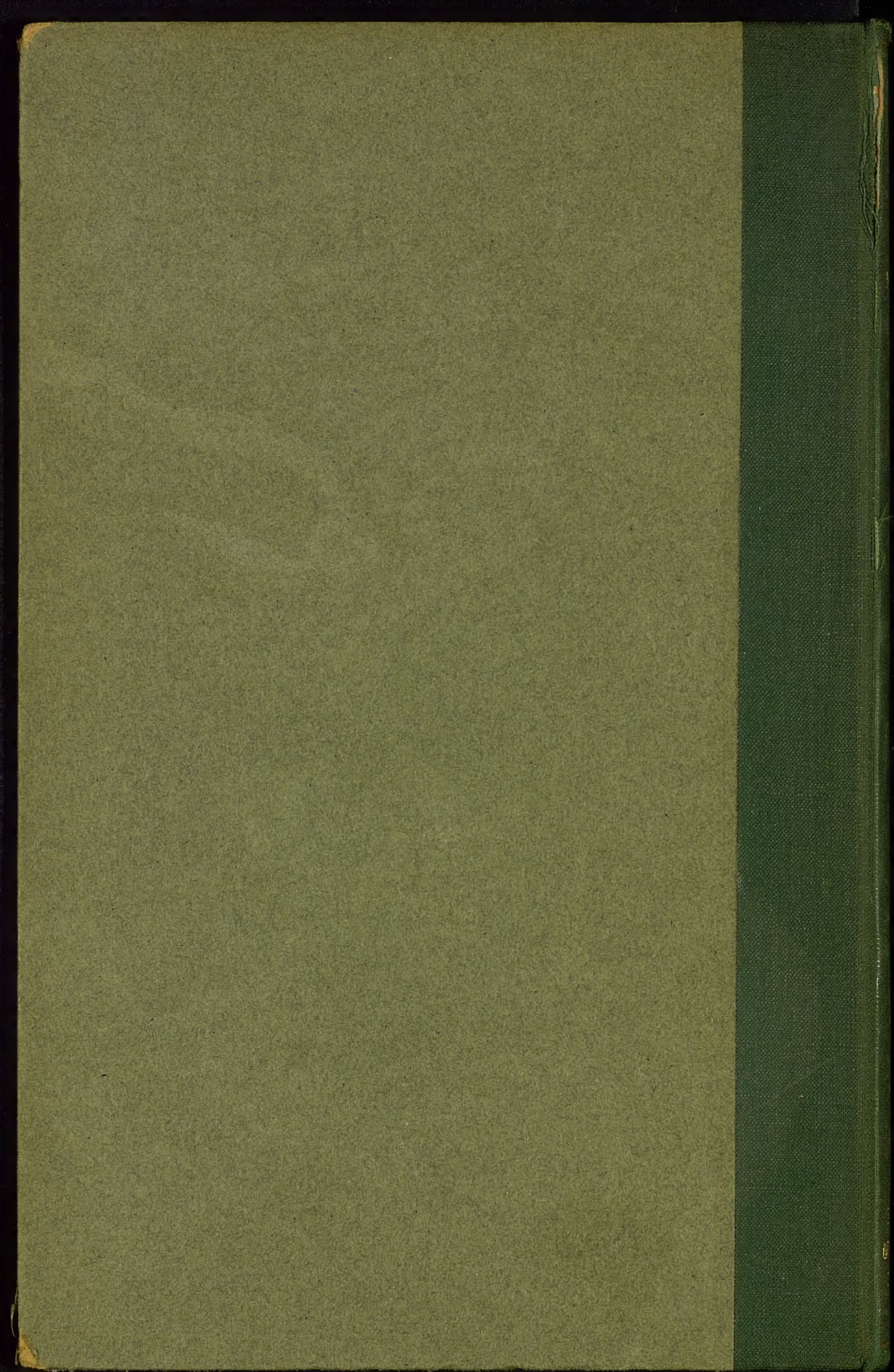






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